

United States 12  
Circuit Court of Appeals  
For the Ninth Circuit.

---

DAISY S. KOHLER,

Appellant,

vs.

YEOMAN MUTUAL LIFE INSURANCE  
COMPANY and CLARA KOHLER,

Appellees.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Montana.

FILED

OCT 27 1938



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

DAISY S. KOHLER,

Appellant,

vs.

YEOMAN MUTUAL LIFE INSURANCE  
COMPANY and CLARA KOHLER,

Appellees.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Montana.



# INDEX

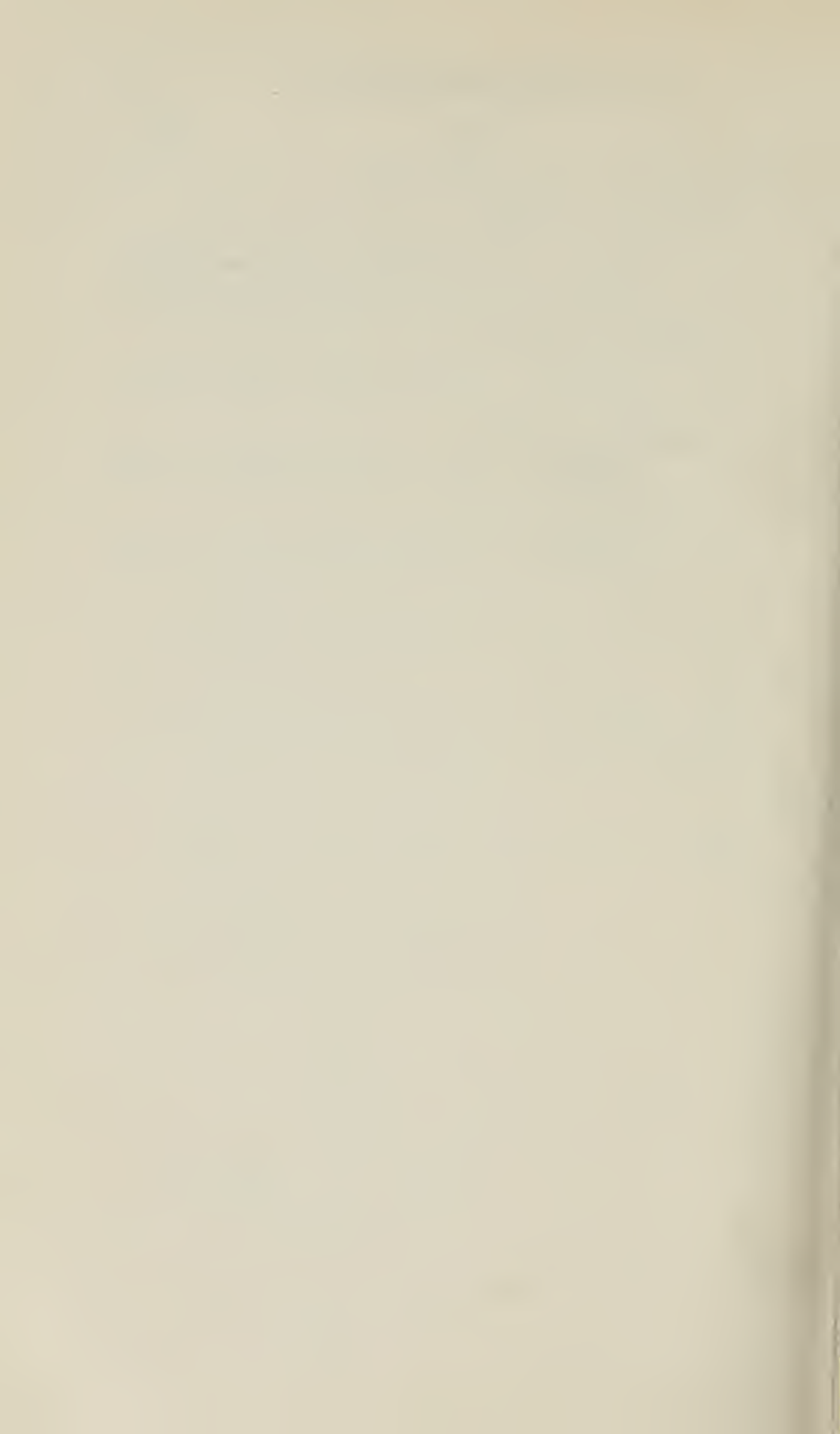
---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Allowance of Appeal.....	104
Assignment of Errors.....	100
Attorneys, Names and Addresses.....	1
Bond on Appeal.....	104
Caption .....	2
Citation .....	106
Clerk's Certificate to Transcript of Record.....	147
Decree .....	97
Findings of Fact, Conclusions of Law and Order .....	2
Order Denying Motion to Dismiss Appeal.....	149
Order of Circuit Court of Appeals Extending Time to File Transcript.....	145
Petition for Appeal.....	103
Praecipe for Transcript.....	143
Praecipe for Transcript (second).....	146
Stipulation in re Substitutions and Additions to Proposed Statement of Evidence.....	142

	Index	Page
Testimony .....		108
Exhibits for Defendants:		
2—Letter dated January 17 to J. Victor Kohler from Clara Kohler.....		113
3—Letter dated March 7, 1931 to Mrs. Daisy S. Kohler from P. G. Schroeder..		116
4—Letter dated April 7, 1931 to P. G. Schroeder from Daisy S. Kohler.....		119
5—Letter dated March 10, 1931 to P. G. Schroeder from Daisy S. Kohler.....		117
6—Letter dated March 24, 1931 to Daisy S. Kohler from P. G. Schroeder.....		118
8—Letter dated November 17, 1933 to Nu- zum and Nuzum signed Ass't to General Counsel .....		124
9—Bill of Sale dated September 9, 1930 signed by Daisy Kohler.....		128
Witnesses for Defendants:		
Kohler, Mrs. Daisy S.		
—direct .....		110
—cross .....		114
—redirect .....		122
—rebuttal .....		136
Witnesses for Plaintiff:		
Ford, Mr. S. C.		
—direct .....		108
Kohler, Mrs. Clara		
—direct .....		125
—cross .....		126

Index	Page
Witnesses for Plaintiff (cont.):	
Schroeder, Philip	
—direct .....	130
—cross .....	133
Smith, Paul W.	
—direct .....	137
Spaulding, C. A.	
—direct .....	110
Toomey, E. G.	
—direct .....	110





NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

WELLINGTON D. RANKIN and  
ARTHUR P. ACHER,

both of Helena, Montana, and

H. W. PITKEN and

J. G. BOWES,

both of Des Moines, Iowa,

Attorneys for Plaintiff and Appellee.

PAUL W. SMITH and

DAVID R. SMITH,

both of Helena, Montana,

Attorneys for Defendant and Appellee,

Mrs. Clara Kohler.

T. H. MACDONALD,

of Helena, Montana,

Attorney for Defendant and Appellant,

Mrs. Daisy S. Kohler. [1\*]

---

Be it remembered that on June 15, 1937, Findings of Fact, Conclusions of Law and Order was duly filed herein, being in the words and figures as follows, to-wit: [2]

---

\*Page numbering appearing at the foot of page of original certified Transcript of Record.

District Court of the United States District of  
Montana, Helena Division.

YEOMEN MUTUAL LIFE INSURANCE COM-  
PANY, formerly Brotherhood of American  
Yeomen, a corporation, Des Moines, Iowa,  
Plaintiff,

vs.

MRS. CLARA KOHLER, 3 North Main Street,  
Helena, Montana, and MRS. DAISY S.  
KOHLER, 501 O. & B. Building, Spokane,  
Washington,

Defendants.

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

This suit in equity was begun by a Bill of Interpleader, duly verified, filed pursuant to the provisions of the Act of May 8, 1926, c. 273, Secs. 1-3, 44 Stat. 416; 28 U. S. C. Sec. 41 (26).

In its Bill of Interpleader the plaintiff alleges:

“That the plaintiff, the Yeomen Mutual Life Insurance Company, formerly Brotherhood of American Yeoman, is and at all times mentioned herein has been, a corporation duly incorporated, existing and doing business under the laws of the State of Iowa; that on May 1, 1932, the Brotherhood of American Yeomen was transformed from a fraternal beneficiary society to a mutual, level premium, life insurance company and the name was changed to the Yeomen Mutual Life Insurance Company, said transformation being made under the

laws of the State of Iowa, Sections 8861 to 8893 of said statutes of the State of Iowa; that said statutes provide that a fraternal beneficiary society may so transform but as to its members at the time of transformation, it shall be a con- [3] tinuation of the original corporation, Section 8882 reading:

‘Such amendment or reincorporation shall not affect existing suits, claims or contracts.’

That by virtue of the above sections of the statute, the insurance in force prior to May 1, 1932, shall be and is governed by the Constitution and By-Laws of the Brotherhood of American Yeoman then in force on said date, to-wit: May 1, 1932; that the principal place of business of said corporation is in Des Moines, in the State of Iowa, and said company is a citizen of the State of Iowa; that the defendant, Clara Kohler, is a citizen of and resides in the State of Montana within the territorial jurisdiction of this court; that the defendant, Daisy S. Kohler, is a resident and citizen of the State of Washington.

“That the plaintiff as a fraternal beneficiary society issued a certain certificate of insurance, under the terms and conditions of which it provided for the payment of more than \$500.00 as benefits to a designated beneficiary; that two adverse claimants, citizens of different states, one of whom resides within the territorial jurisdiction of this court, are claiming to be entitled to such insurance or benefits.

“That on or about the 26th day of July, 1923, the plaintiff company issued to one James Victor Kohler its certificate of insurance No. 177490 providing

for death benefits in the sum of \$2,000.00, wherein Daisy S. Kohler, wife of the insured, was named beneficiary. Copy of said certificate is hereto attached, marked Exhibit "A" and made a part hereof. That on or about the 26th day of August, 1931, the insured in said certificate, to-wit: the said James Victor Kohler, requested that a change be made in the beneficiary named in said certificate and signed an application known and designated as 'Application for Change of Beneficiary' requesting that the beneficiary be changed from Daisy S. Kohler, wife, to Clara Kohler, wife, and delivered the [4] said application to plaintiff company. That the said application for Change of Beneficiary was received by this company at its home office on or about the 31st day of August, 1931, and a photostatic copy of said Application for Change of Beneficiary is hereto attached, marked Exhibit "B" and made a part hereof. That the said James Victor Kohler failed to submit his certificate of insurance with the aforesaid Application for Change of Beneficiary, but thereafter on March 5, 1932 completed a blank known and designated as 'Application for Duplicate Benefit Certificate under Section 115, By-Laws 1929, and Waiver', which is hereto attached, marked Exhibit "C" and made a part hereof, stating that said certificate was out of his possession and he was unable to secure the same. Said Section 115 of the 1929 By-Laws reads as follows:

'In case a benefit certificate is lost or destroyed or otherwise out of the possession or control of the member insured a new certificate

may be issued upon the filing of a sworn statement and written request by the member with the Secretary who shall thereupon issue a duplicate certificate, provided the explanation contained in the sworn statement is satisfactory to the Secretary. The Secretary will furnish on request a proper form for said request and affidavit.'

That in compliance with said request for change of beneficiary and application for duplicate certificate, the plaintiff issued a duplicate certificate of membership to the said James Victor Kohler bearing the same number 177490, which certificate provided for the payment of death benefits in the sum of \$2,000.00 and in which certificate it was provided that all payments or benefits that accrue or become due by virtue of said certificate shall be payable to Clara Kohler, wife, or in accordance with the laws of this company. That the said Certificate provides among other things, the following:

'It is agreed by the member holding this certificate that the certificate, the charter or Articles of Incorporation, the By-Laws of the Association, the application for membership and the medical examination [5] signed by the applicant, with all amendments to each thereof, shall constitute the agreement between the Association and the member, and any changes, additions or amendments to said charter or Articles, of Incorporation and By-Laws of the Association enacted subsequent to the issuance of this certificate shall be binding upon the

member and his beneficiary or beneficiaries and shall govern and control the agreement in all respects in the same manner as if such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.'

That at this time the defendant, Mrs. Daisy S. Kohler, holds one certificate and Mrs. Clara Kohler holds a duplicate certificate.

"That the said insured, James Victor Kohler, died on or about the 9th day of May, 1933; that by reason of the death of the said James Victor Kohler the plaintiff has become indebted under the said certificate of insurance to such person or persons as may be entitled to be paid the proceeds of the same in accordance with the terms thereof and in accordance with the provisions of the Constitution and By-Laws of the Brotherhood of American Yeomen in force and governing.

"That at the time of the change of beneficiary as hereinbefore set forth in Paragraph III and continuing until the filing of this Bill of Interpleader, there was and there still is in full force and effect the following provisions of the Constitution and By-Laws of the plaintiff company as to certificates issued prior to May 1, 1932:

'Sec. 113. Should any member in good standing desire to change his beneficiary or beneficiaries, he may do so by returning his certificate to the Local Secretary of his Homestead, together with his written request endorsed

thereon for the proposed change, giving the name of the desired beneficiary or beneficiaries, together with their relation to the member. Said request shall be sent to the Secretary, and the Secretary shall endorse on said certificate said change and return said certificate to the said member.

‘Sec. 114. If for any cause a beneficiary named in the certificate is barred by law from receiving the benefits provided for in said certificate or in case the member makes his spouse the beneficiary in his certificate and said member and his spouse are divorced, or legally separated by order of a court of competent jurisdiction before the death of the member, and said member makes no other disposition of the benefits, then the benefits which said [6] barred beneficiary would have taken, had he not been barred, or which the surviving spouse would have taken but for said divorce or order of separation, shall be paid to the person or persons who would have been entitled to receive the same if the beneficiary barred or divorced or spouse separated by order of court, as the case may be, had pre-deceased the insured and the insured had named no other beneficiary.

‘Provided, however, that payment of the benefits to the beneficiary designated in a certificate shall relieve the association from all liability under said certificate unless prior to the date of said payment the Secretary of the Association shall have received notice in writing that

the designated beneficiary is barred by law from receiving said benefits or was divorced or legally separated from the member at the time of the death of the member.'

“That the defendant, Clara Kohler, claims to be the wife of said James Victor Kohler, deceased, and claims to be entitled to the proceeds of said benefit certificate in this company as the beneficiary named in the hereinbefore mentioned certificate of membership dated July 26, 1923, being Exhibit “A” hereto attached. That the defendant, Daisy S. Kohler, claims to be the former wife of said James Victor Kohler, deceased, and claims to be entitled to the proceeds of said insurance by reason of a legal agreement or assignment or property settlement entered into at the time James Victor Kohler and Daisy S. Kohler were divorced and now on file with the Court in Helena, Montana. In this connection, plaintiff alleges that long after the death of the insured, plaintiff learned that on February 20, 1929, a decree of divorce was duly entered in the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, dissolving the marriage of said James Victor Kohler and said Daisy S. Kohler, wherein an alleged settlement agreement between the said parties is alleged to have been entered into. That, on file in said cause is a purported copy of an alleged settlement agreement between said parties, providing, among other things, that said James Victor Kohler would pay the premiums on the policy of insurance



herein involved, thereafter to become due and that said Daisy S. Kohler would remain the beneficiary thereof. That Plaintiff was without [7] knowledge of the aforesaid alleged settlement agreement until long after the aforesaid certificate became due and payable; that it now appears that said James Victor Kohler, by his own acts and conduct, attempted to give said Daisy S. Kohler an absolute vested interest in the aforesaid policy of insurance and thereafter purported to designate the said Clara Kohler as his beneficiary. That at this time the defendant, Daisy S. Kohler, holds the original certificate and Clara Kohler holds a duplicate certificate; that both of said claimants insist that said policy of insurance be paid to them and have threatened to file suit against the plaintiff thereon; that plaintiff respectfully represents that it should not be obliged to incur the expense necessary to conduct litigation incident to determining the legality of the respective rights of said claimants, particularly since each claimant was given color of right by the insured himself in his lifetime without the knowledge of plaintiff.

“That the plaintiff has and claims no interest in the subject matter of the contention, to-wit: the said sum of \$2,000, being the amount payable out of the proceeds of said insurance; that the plaintiff has incurred no independent liability to any of the parties hereto and does not in any respect collude with any of the defendants but is perfectly indifferent between them, being in the position of a

mere stakeholder; that the plaintiff does not ask any relief herein at the request of either of said defendants but asks relief solely of its own free will to avoid being molested and injured touching the matters herein set forth.

“That due proof of the death of said insured was received by plaintiff on the 22nd day of May, 1933, from Mrs. Daisy S. Kohler; that thereafter due proof of the death of said insured was received from Clara Kohler on the 24th day of May, 1933. That thereafter plaintiff attempted by correspondence with attorneys for the said claimants to have them determine between themselves their respective [8] rights to said certificate of insurance; that it was not until in the latter part of November, 1933, that the plaintiff was informed by said attorneys that there was no possibility of the parties interested being brought to some agreement in regard to how the proceeds should be paid, and it now appearing impossible to do so, the plaintiff files this Bill of Interpleader with reasonable diligence after having become satisfied that the rights of said claimants can only be determined by suit.

“That the plaintiff is uniformed and uncertain as to the respective rights of said defendants and cannot determine without hazard to itself to which of said defendants the money due upon and under the said certificate of insurance rightfully belongs; that the plaintiff is in doubt as to which of the said defendants is right in their respective claims and has no means of satisfactorily ascertaining what are the facts which are relied upon by said defendants

as to their valuation for the respective claims; that the plaintiff cannot pay over the money due under said certificate to either of the defendants without taking upon itself the responsibility of determining doubtful questions of law and fact and without incurring the risk of being subjected to great cost and expense in defending itself and to a multiple payment of said indebtedness if it should finally appear that plaintiff had wrongfully determined in favor of either claimant at the expense of the other and without being involved in a multiplicity of suits.

“That the plaintiff has paid the amount due under said certificate of insurance, to-wit: the sum of \$2,000.00, into the registry of this court, there to abide the judgment of this court to be made and entered thereunder.”

and,

Prays: [9]

“That the defendants and each of them may be ordered and decreed to interplead and settle between themselves their right or claim to the money due under such certificate of insurance.

“That the defendants and each of them be restrained by preliminary order and injunction from instituting or prosecuting any suit or proceeding in any state court or in any other Federal Court on account of said money or said certificate of insurance, or any other matters hereinabove stated, and that in due course such order and injunction may be made permanent.

“That this honorable court shall issue its process for the defendants, to-wit: Clara Kohler and Daisy

S. Kohler, directed to the marshals of the various District Courts of the United States in which the said defendants respectively reside or may be found, which process shall be returnable upon a day certain at such time as this honorable court shall determine.

“That this plaintiff may be allowed a sum for its reasonable expense and attorney’s fees in connection with this action in such amount as the court may deem just and proper together with its costs.

“That the plaintiff may be released from further liability on account of said certificate of insurance.

“That the plaintiff may have such other and further relief as may be equitable in the premises.”

So far as it is material here, Exhibit “A” attached to said Bill of Interpleader is as follows:

“This certificate is issued in exchange for a Form ‘A’ certificate whole life certificate.

Age 44

Amount \$2000

The Brotherhood of  
(emblem)

American Yeomen

Des Moines, Iowa [10]

This Benefit Certificate issued by The Brotherhood of American Yeomen, Witnesseth: That Archer, James Victor Kohler, of Helena, Montana, a member of Homestead No. 546 of The Brotherhood of American Yeomen located at Helena, Montana is entitled to the following benefits and privileges:

**Death Benefit:**

Within 90 days after the receipt of satisfactory proof of the death of the above named member, The Brotherhood of American Yeomen will pay to Daisy S. Kohler, Beneficiary changed, request attached, bearing the relationship of wife, the sum of Two Thousand Dollars.

**Additional Indemnity for Accidental Death:**

In the event and upon satisfactory proof that the death of the member named above was solely and proximately caused by external, bodily, accidental injury, exclusively and independently of all other causes; that such death occurred, within 90 days after such injury and before said member had attained the age of 65 years, within the time said member was paying the payments provided for on the back of this certificate, while this certificate was in full force under its original conditions and before the default of any payments, monthly or otherwise, and providing such injury was received while being transported as a passenger in a regularly licensed common carrier, operated by steam or electricity for the transportation of passengers, then The Brotherhood of American Yeomen will pay the beneficiary of said member, double the amount named above, or, Four Thousand Dollars.

**DEPOSIT OF RESERVES.**

The Brotherhood of American Yeomen agrees to maintain with the Insurance Commissioner of the State of Iowa, the accumulations necessary to pro-

vide the benefits promised by this certificate, such accumulations being the usual reserves computed by the American Experience Table of Mortality and four percent interest.

W. E. DANY,

GEO. N. FRINK,

Secretary.

President.

\* \* \* \* \*

Fraternal Beneficial Association. [11]

The Brotherhood of American Yeomen is a fraternal beneficial association, organized and existing under and by virtue of the laws of the State of Iowa, and is lawfully admitted to transact and is transacting its business in the state wherein the said member is domiciled and this certificate is delivered, and the provisions of this certificate are in conformity with the laws of the State of Iowa and with the By-Laws of The Brotherhood of American Yeomen.

Agreement.

It is agreed by the member holding this certificate that the certificate, the Charter or Articles of Incorporation, the By-Laws of the Association and the application for membership, and the medical examination, signed by the applicant, with all amendments to each thereof, shall constitute the agreement between the Association and the member; and any changes, additions or amendments to said Charter or Articles of Incorporation and By-Laws of the Association enacted subsequent to the issuance of this certificate shall be binding upon the member and his beneficiary, or beneficiaries, and shall govern and control the agreement in all respects in the

same manner as if such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

In Witness Whereof, The Brotherhood of American Yeomen has by its President, attested by its Secretary, signed and caused the corporate seal of the said Association to be affixed to this contract at the city of Des Moines, in the State of Iowa, U. S. A., this 26th day of July, A. D. 1923.

GEO. N. FRINK,  
President."

Attest:

[Seal] W. E. DANY,  
Secretary.

Attached to said Exhibit "A" are an "Application for Change of Beneficiary"; and, an "Application for Duplicate Benefit Certificate under Sections 115, By-Laws 1929 and Waiver" which are in words and figures as follows:

"The Brotherhood of American Yeomen.

APPLICATION FOR CHANGE OF  
BENEFICIARY.

To the Brotherhood of American Yeomen:

You are hereby notified that I, the undersigned, an insured member of said Association in Homestead No. 546, State of Montana, to whom was issued Benefit Certificate No. 177490, dated the 26th day of July, A. D. 1923, wherein Daisy S. Kohler was designated as beneficiary, do hereby revoke said designation of beneficiary and surrender said certificate for cancellation; and that I hereby appoint the

following named person..... as my beneficiar.....,  
and request that you acknowledge said change. [12]

Name—Clara Kohler.

Age—32.

Amount—\$2000.00.

Relationship—Wife.

Address—Helena, Mont.

JAS. V. KOHLER,  
Genuine Signature of Applicant.

Signed in the presence of:  
MRS. DAVID GEHRING  
MRS. LEONARD M. MICHELS

State of Montana, County of Lewis & Clark, ss.  
On this 26th day of August A. D. 1931, before me  
personally appeared Jas. V. Kohler to me known to  
be the person described in and who executed the  
foregoing instrument, and acknowledged that he exe-  
cuted the same as his free act and deed.

[Notarial Seal] (Name Unreadable]

Notary Public in and for said County and State.

My commission expires Nov. 14, 1933''

Change Acknowledged 3-11-32.

GEO. F. WALL,  
Secretary.



“The Brotherhood of American Yeomen  
Application for Duplicate Benefit Certificate Under  
Section 115 By-Laws 1929, and Waiver.

To The Brotherhood of American Yeomen,  
Des Moines, Iowa.

I, James Victor Kohler, hereby advise the Brotherhood of American Yeomen of Des Moines, Iowa, that Benefit Certificate No. 177490 issued on my life, is out of my possession and control. The reason therefor is as follows: Out of Possession—Unable to Secure. I desire said Association to issue to me a Benefit Certificate marked “Duplicate” bearing the same date and number, and in the same amount as the above named Benefit Certificate.

In consideration of the issuance by the said Yeomen of the duplicate Benefit Certificate herein requested, I hereby release said Association from any and all liability of every nature and sort, either to me or any beneficiary therein named, arising under, out of or by virtue of the issuance of the said Benefit Certificate now [13] out of my possession and control.

I hereby certify that I am in good standing in Homestead No. 546, located at Helena, State of Montana.

Dated this 5 day of March 1932, at Helena, State Mont.

**JAMES VICTOR KOHLER,**  
(Sign name in full)

Subscribed and sworn to before me by the above named James Victor Kohler this 5 day of March, A. D. 1932.

JOSEPH W. CHIVERS,  
Notary Public in and for the County of Lewis & Clark, State Mont.

Commission expires Sept. 9, 1933.”

---

By her verified answer filed herein the Defendant, Daisy S. Kohler, admits the allegations of the Bill of Interpleader herein and that plaintiff is entitled to the relief prayed for therein excepting that demanded in paragraphs 4 and 5 of the prayer wherein plaintiff prays for an allowance of attorney's fees and a release from further liability on account of the certificate of insurance described in the Bill of Interpleader and by way of defense thereto alleges that there is due, owing and unpaid on said certificate of insurance interest at the rate of eight per cent per annum from May 9, 1933, up to the time of the deposit of said amount of \$2,000 in this court.

By her verified answer filed here in the Defendant, Clara Kohler, admits:

1. That the principal place of business of the plaintiff corporation is in the City of Des Moines, in the State of Iowa, and that the said plaintiff is a citizen of the State of Iowa; that the Defendant, Clara Kohler, is a citizen of and resides in the State of Montana, within the territorial jurisdiction of this court; and, that the Defendant, Daisy S.

Kohler is a citizen and resident of the State of Washington; and as to all other allegations set forth in said Bill of Interpleader "alleges that she has no knowledge or information thereof sufficient to form a belief and therefore denies the same;" [14]

2. That the plaintiff as a fraternal beneficiary society issued a certain certificate of insurance under the terms and conditions of which it provided for the payment of more than \$500 as benefits to a designated beneficiary; that she "claims such insurance or benefits and that she resides within the territorial jurisdiction of this court;" and, "denies each and every other allegation set forth in" paragraph 2 of said Bill of Interpleader;

3. Admits the allegations set forth in paragraphs 3, 4, 7 and 10 of said Bill of Interpleader; alleges that as to paragraphs 5 and 9 of said Bill of Interpleader she has "no knowledge or information thereof sufficient to form a belief and therefore denies the same;"

4. As to the allegations of paragraph 6 of said Bill of Interpleader she admits that she claims to be and alleges that she is the wife of James Victor Kohler; that she claims to be entitled to the proceeds of said benefit certificate as the beneficiary in said certificate of membership, dated July 26, 1923, being Exhibit "A" to said Bill of Interpleader; that on February 20, 1929, a decree of divorce was duly given or made in the District Court of the First Judicial District of the State of Montana, in

and for the County of Lewis & Clark, dissolving the marriage of said James Victor Kohler and said Daisy S. Kohler; that she holds a duplicate certificate, and claims that said policy of insurance should be paid to her and has threatened to file suit against the plaintiff herein; and, "denies each and every other allegation set forth in said paragraph 6 of said Bill of Interpleader; and,

5. "Denies each and all allegations of said Bill of Interpleader not so specifically admitted or denied."

Further Answer and Cross Complaint of the  
Defendant Daisy S. Kohler.

"By way of further answer and cross complaint against the defendant Mrs. Clara Kohler" the defendant Daisy S. Kohler alleges; and defendant Clara Kohler admits: [15]

1. That for a valuable consideration plaintiff issued to James Victor Kohler its certificate of insurance No. 177490 as described in paragraph 3 of the Bill of Interpleader; and, that a true and correct copy of said certificate of insurance appears as Exhibit "A" of the Bill of Interpleader;

2. That on the date of the issuance of said certificate of insurance, to-wit: on the 26th day of July, 1923, Daisy S. Kohler was the wife of James Victor Kohler and that she continued to be the wife of said James Victor Kohler up to the 20th day of February, 1929, on which date the bonds of matrimony existing between the said James Victor

Kohler and said Daisy S. Kohler were dissolved by the decree of the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis & Clark, which was and is a court of general jurisdiction and which said decree was duly given and made; and, that a true and correct copy of said decree is attached to said cross complaint, marked Exhibit "A"; and

3. That said James Victor Kohler died on the 9th day of May, 1933.

The defendant Daisy S. Kohler therein also alleges, but the defendant Clara Kohler denies:

1. That said certificate of insurance No. 177490, a copy of which is attached as Exhibit "A" to the Bill of Interpleader herein, provides "for the payment by the plaintiff to the defendant Daisy S. Kohler of the sum of \$2000 in the event of the death of the said James Victor Kohler;

2. That at the time of the issuance of said certificate of insurance, to-wit: July 28, 1923, the defendant, Daisy S. Kohler was a person dependent on the said James Victor Kohler and continued to be such person dependent upon him until his death on May 9, 1933;

3. That said decree of divorce has not been revoked, modified, or changed and the same was in full force and effect at the time of the death of said James Victor Kohler; [16]

4. That at the time of said decree of divorce the parties thereto entered into a contract and agreement, a memorandum of which was made in writ-

ing, signed by the parties thereto, and approved in said decree of divorce, and filed in said cause and which agreement was in full force and effect on the ninth day of May, 1933;

5. That said agreement so approved by the court provided that the said James Victor Kohler should pay the premiums on said certificate of insurance above described and that this answering defendant should remain the beneficiary thereof. That said agreement was made in recognition of the dependence of this answering defendant on the said James Victor Kohler for support for herself and her minor children mentioned in Exhibit "A" hereof and that said agreement was made and entered into in reliance on the agreement of said James Victor Kohler that he would pay the premiums on said certificate of insurance and that this answering defendant should remain the beneficiary thereof, and without such provision said agreement would not have been made or entered into. And that said decree of divorce approved said agreement and property settlement in reliance on said provision and agreement;

6. That the certificate of insurance, of which Exhibit "A" of the Bill of Interpleader is a copy, was delivered to this answering Defendant by the said James Victor Kohler at the time of said divorce as an assurance to her that she should remain the beneficiary thereof, and is now, and ever since has been, in her possession and control;

7. That promptly after the death of said James Victor Kohler, May 9, 1933, the defendant Daisy S. Kohler made due proof of his death and of her claim to the proceeds of said certificate of insurance and filed the same with the plaintiff; all in due manner and form as required by law and the rules and by-laws of the plaintiff and that the amount deposited by the plaintiff in this court is now due and owing to the defendant Daisy S. Kohler, together with interest [17] on said sum from May 9, 1933, at the rate of eight per cent per annum and in equity and good conscience should, by the order of this court be paid to her;

8. That any claim of the said defendant, Mrs. Clara Kohler, is null, void, of no effect and without equity in this that the said James Victor Kohler by the contract and agreement aforesaid induced this answering defendant to change her position with reference to him and to waive other rights and claims that she otherwise had against him, in consideration that he, by said agreement, waived his right to change his beneficiary in said certificate of insurance and that in equity and good conscience he was estopped, and the defendant Clara Kohler should not be heard to say that he had the right to change his beneficiary in said certificate of insurance; and,

9. This answering defendant further alleges that previous to the date of the divorce aforesaid, the said Clara Kohler became enamored of the said James Victor Kohler and they together conspired

against this defendant to break up her home and to force her, by a course of cruel conduct toward this defendant by them, to apply for a decree of divorce so that said Clara Kohler and James Victor Kohler might marry, and that said Clara Kohler had full knowledge of the pendance of the said action for divorce, and was responsible therefor, and the complaint therein alleged that the said James Victor Kohler had repeatedly advised the plaintiff therein and defendant herein that his affections had been transferred to another woman and of his affection for her, and Defendant alleges that such "another woman" was the defendant Clara Kohler herein and that the said James Victor Kohler consulted the said Clara Kohler as his intended wife as to the terms of said property settlement and that she consulted and advised with the said James Victor Kohler with reference thereto, and had full knowledge of the terms thereof and consented thereto and accepted the benefits of said pursuant divorce [18] and is estopped to, and should not in equity be heard to claim that said James Victor Kohler had any right to change his beneficiary in said certificate of insurance and more particularly to name the said Clara Kohler as his beneficiary therein and is estopped to claim such fund or any part thereof.

By reply thereto the plaintiff admits the truth of the allegations contained in paragraph 1 of the cross complaint contained in the answer and cross complaint of the defendant Daisy S. Kohler; and, as to the remainder thereof states that "it has no



knowledge or information sufficient to form a belief and for that reason instituted this action, except the allegation that said answering defendant is entitled to interest which the plaintiff specifically denies.”

The Decree of Divorce referred to in the answer and cross complaint of the defendant Daisy S. Kohler is in words and figures as follows, to-wit:

“This cause came on regularly to be heard in open court this 20th day of February, 1929, upon the complaint of the plaintiff, plaintiff appearing herein by her attorneys Lester H. Loble and Hugh R. Adair and the defendant appearing herein by H. Sol. Hepner, his attorney.

“The defendant herein having interposed a demurrer to the complaint, said demurrer was by the court duly and regularly overruled and the defendant was required to answer instanter, said defendant having refused to answer or plead further herein his default was duly and regularly entered; whereupon evidence was offered upon the part of the plaintiff free from objection as to its competency, relevancy and materiality from which it appears and the court so finds that the plaintiff is entitled to the relief prayed for in her complaint and that the material allegations of said complaint have been proven true.

“It appearing from the evidence that the parties hereto have effected a property settlement between themselves whereby the [19] plaintiff has by a bill of sale transferred and assigned to plaintiff an interest in his said business and property which said

transfer and settlement appears to this court to be just and equitable and that in addition thereto alimony should be granted and allowed to the plaintiff as is prayed for in said complaint, and that the defendant should be required to pay certain sums toward the support, maintenance and education of the two minor children of plaintiff and defendant.

“Now Therefore, on motion of Lester H. Loble and Hugh R. Adair, attorneys for plaintiff,

“It Is Ordered Adjudged and Decreed:

“1. That the bonds of matrimony heretofore existing between plaintiff and defendant be and the same hereby are wholly and permanently dissolved and the parties hereto freed from all the obligations thereof.

“2. That the plaintiff be and she is hereby given and awarded the exclusive custody and control of Mary Jane Kohler, the minor daughter of the parties hereto, with the right to take the child from the State of Montana.

“3. That the parties hereto have the joint custody and control of Roy Kohler, the minor son of the parties hereto.

“4. That the defendant be required to and he is hereby ordered to pay to plaintiff for the support, maintenance and education of the said Mary Jane Kohler, the sum of Thirty Dollars (\$30.) per month commencing with the 20th day of February 1929 and to be paid on the 20th day of each month thereafter during the minority of said Mary Jane Kohler.

“5. That the defendant be required and he is hereby ordered to pay to the said Roy Kohler for his support, maintenance and education the sum of Fifty Dollars (\$50.) per month commencing with the 20th day of February 1929 and the same to be paid on the 20th day of each month thereafter during the minority of Roy Kohler.

“6. That the defendant be required and he is hereby ordered to pay to plaintiff the sum of One Hundred and Twenty-Five Dollars [20] (\$125.) per month as alimony, commencing on the 20th day of February, 1929, and each and every payment thereafter is to be made on or before the 20th of each month.

“Done in open court this 20th day of February, 1929.

(Signed) A. J. HORSKY  
Judge”

Further Answer and Cross Complaint of the  
Defendant Clara Kohler.

By way of further answer and cross complaint against the defendant Daisy S. Kohler, the defendant Clara Kohler alleges, and the defendant Daisy S. Kohler by failure to deny admits:

1. “That on the 26th day of July 1923, the plaintiff herein for valuable consideration issued to James Victor Kohler its certain certificate of insurance number 177490 in the sum of Two Thousand Dollars (\$2,000.00) wherein Daisy S. Kohler, defendant herein was beneficiary, a copy of which

said certificate marked Exhibit "A" is attached to plaintiff's Bill of Interpleader herein and by this reference said Exhibit "A" is made a part of this Answer and Cross Complaint.

2. "That on the 20th day of February, 1929, the bonds of matrimony existing between the said James Victor Kohler and the said Daisy S. Kohler were dissolved by Decree duly given or made in the District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark, a copy of which Decree marked "Exhibit A" is hereto attached and made a part hereof.

3. "That on the 11th day of March, 1929, the said defendant Mrs. Clara Kohler and the said James Victor Kohler were united in marriage.

4. "That on the said 20th day of February, 1929, the said James Victor Kohler and the said defendant Mrs. Daisy S. Kohler entered into that certain contract for settlement and adjustment of their property rights in contemplation of said Decree of Divorce a copy of which said contract marked "Exhibit B" is hereto attached and made a part hereof.

[21]

5. "That on the 9th day of September, 1930, in the City of Helena, County of Lewis and Clark, State of Montana, in consideration of the sum of \$4,000.00 represented as follows, to-wit: One Thousand Dollars (\$1,000.00) in cash and which said cash the said James Victor Kohler paid to the said defendant Mrs. Daisy S. Kohler and that certain promissory note in the words and figures, to-wit:

‘\$3,000.00 Helena, Montana, September 9, 1930.

‘For value received I promise to pay to Daisy Kohler, or order, the sum of \$3,000.00 in the installments and within the times following, to-wit: The sum of \$50.00 on or before the 9th day of October, 1930, and the sum of \$50.00 on or before the 9th day of November, 1930, and a like sum of \$50.00 on or before the 9th day of each and every month thereafter until said principal sum is fully paid, together with interest thereon at the rate of six per cent per annum from date hereof until paid, interest payable monthly on or before the 9th day of each and every month; negotiable and payable at the Union Bank & Trust Company of Helena, Montana; and the makers and endorsers hereby waive presentment, demand, protest, and notice of each and all thereof and of non-payment, and I agree to pay reasonable attorneys fees in case of suit on this note because of default in payment of principal or interest or any part thereof.’

‘J. VICTOR KOHLER’ ”

6. “That after said settlement the said James Victor Kohler demanded of said Mrs. Daisy S. Kohler that she turn over to him said insurance certificate but the said Mrs. Daisy S. Kohler refused to turn said insurance certificate over to him.

7. “That on the 26th day of August A. D. 1931, said James Victor Kohler applied to the plaintiff,

The Brotherhood of American Yeomen to change the beneficiary on said certificate of insurance from Daisy S. Kohler to Clara Kohler but said The Brotherhood of American Yeomen notified said James Victor Kohler that it would be necessary to either produce the original certificate of insurance or to have a duplicate certificate issued and so on the 5th day of March, 1932, the said James Victor Kohler applied to said Plaintiff The Brotherhood of American Yeomen for a Duplicate Certificate of insurance a copy of which said certificate of insurance appears as Exhibit "A" of the Bill of Interpleader and by this reference said Exhibit "A" is made a part of this cross complaint." [22]

8. That the said James Victor Kohler died on May 9, 1933, in the City of Helena, County of Lewis and Clark, State of Montana, and this answering defendant (Clara Kohler) made due proof of his death and of her claim to the benefits and the proceeds of said certificate of insurance and filed the same with the plaintiff, The Brotherhood of American Yeomen, all in due manner and form and as required by law and the rules and by-laws of said plaintiff.

The defendant Clara Kohler therein also alleges, but the defendant Daisy S. Kohler denies:

1. By giving the note which the said James Victor Kohler made, executed and delivered to the defendant Daisy S. Kohler as set out in paragraph 5 of the further answer and cross complaint of the defendant Clara Kohler the said James Victor

Kohler settled in full with the defendant Daisy S. Kohler for all moneys, obligations, advantages and benefits conferred, due or which in the future would become due under and by virtue of said decree of divorce and under and by virtue of said property settlement contract and said defendant Daisy S. Kohler agreed to satisfy in full and mark paid said decree and contract of record;

2. That the sum of \$2,000 deposited by plaintiff in this court is now due and owing to the defendant Clara Kohler, together with interest on said sum from May 9, 1933, at the rate of six per cent per annum and in equity and good conscience, by the order of this court, be paid to her; and,

3. That any claim of the defendant Daisy S. Kohler is null, void, of no effect and without equity in that the said defendant Daisy S. Kohler settled in full with the said James Victor Kohler.

The copy of the Decree of Divorce attached as Exhibit "A" to the Further Answer and Cross Complaint of the defendant Clara Kohler is identical with the copy of the same hereinbefore set out.

The copy of the agreement attached as Exhibit "B" to said Further Answer and Cross Complaint is in words and figures as follows, to-wit:

[23]

"This agreement made and entered into this 20th day of February, 1929 by and between J. Victor Kohler of Helena, Montana, party of the first part, and Daisy Kohler, of the same place, party of the second part, Witnesseth,

“Whereas, the parties hereto have not been congenial nor able to agree for considerable time past and each of the parties hereto are desirous of going their separate ways and dividing their joint holdings, and,

“Whereas, the second party has declared her intention of instituting a divorce proceeding with a demand for One Hundred and Twenty-Five Dollars (\$125.) per month as alimony; Thirty Dollars (\$30.) per month for the support, maintenance and education of Mary Jane Kohler, the minor daughter; and Fifty Dollars (\$50.) per month for the support, maintenance and education of Roy Kohler, the minor son, and

“Whereas, each of the parties hereto believe that an amicable settlement and adjustment of their property rights can be effected independent of any court action but which settlement the party of the second part intends to and will submit to the court for approval.

“That for and in consideration of the sum of One Dollar (\$1.00) as to the other in hand paid, the receipt whereof is acknowledged, and other good and valuable considerations, the parties hereto agree as follows:

“1. The party of the first part having this day transferred by bill of sale to the party of the second part an undivided one-half interest in and to the business at No. 3 Main Street, known as the Kohler Art Store, and the Business at No. 4 Jackson Street, known as the Kohler Mortuary, all in Helena, Mon-



tana, that the party of the first part shall have the active management and control of said businesses and shall receive as salary therefore a sum not to exceed Three Hundred Dollars (\$300.00) per month; That the party [24] of the first part will conduct the said businesses in a good businesslike manner; that he will employ no more help than is necessary for the conduct of the business and shall not pay salaries to employees in excess of the usual amount paid employees in Helena for the same kind and character of work.

“2. That the parties hereto shall jointly receive the net profits of said businesses, the net profits thereof to be arrived at on or before the first day of January of each year. That from the net profits of said businesses there shall be annually deducted the sum of Fifteen Hundred Dollars (\$1500), annual alimony allowed second party. That after deducting the said sum of Fifteen Hundred Dollars (\$1500) from the net profits, the balance and residue over and above said sum shall be divided equally between the parties hereto. In no one (1) year shall there be deducted more than the sum of Fifteen Hundred (\$1500) from said net profits as aforesaid, and the amount deducted shall be the amount of the alimony actually paid in any one year by the party of the first part to the party of the second part.

“3. That the party of the first part shall furnish quarterly statements of the conditions of said businesses to the party of the second part; that the party

of the second part shall have at all times have the right to inspect said businesses, its books and affairs but shall not interfere with the actual management of said businesses unless the party of the first part should fail to pay the alimony due the party of the second part or unless he shall fail to carry out the terms and provisions of this agreement or shall fail to conform to the decree of divorce and each and every provision thereof. If the party of the first part should fail to carry out the terms of this agreement or should fail to conform to the decree of divorce, then the party of the second part may enter upon said business premises and take over and assume the management of said businesses to the exclusion of the party of the first part until said party of the first part shall have complied with the terms of this agreement and the decree of divorce. [25]

“4. The party of the first part being by the decree of divorce required to pay Roy Kohler the sum of Fifty Dollars (\$50.) per month until said Roy Kohler becomes twenty-one years of age, it is understood that said sum of Fifty Dollars (\$50.) per month shall be charged against the whole of said businesses.

“5. That the party of the first part agrees to transfer to the party of the second part on this date a second mortgage of H. V. Hagler for the purchase of the premises known as 614 Third Street, Helena, Montana, said second mortgage and the notes evidenced thereby being in the sum of Thirty-Five Hundred Dollars (\$3500).

“6. That the party of the first part agrees to transfer to the party of the second part by all his right, title and interest in and to the money due or to become due from Basil Mason for the purchase of 609 Third Street, Helena, Montana, said transaction being evidenced by notes and deeds in escrow and being in the sum of Seven Hundred Eighty Dollars (\$780). By the transfer of the Hagler and Mason obligations to the party of the second part, she shall become the absolute owner thereof.

“7. That the party of the first part shall pay to the party of the second part all of her expenses from Helena, Montana to Norwalk, Connecticut, where the party of the second part is going to visit her daughter, Clarice. That the party of the first part agrees to at any time thereafter pay all the expenses of the party of the second part to any point that she may desire to go from Norwalk for the purpose of making her home.

“8. That the party of the first part agrees that on or before September 1st, 1929 he will purchase an automobile for the party of the second part of her selection, at the point where she then lives and that the same shall cost not less than Seven Hundred and Fifty Dollars (\$750), one-half of the cost of said automobile shall be paid out of the businesses of the parties hereto, the remaining one-half shall be paid individually by the party of the first part. [26] The Buick automobile now in the possession of the party of the first part shall be his own individual property.

“9. That party of the first part agrees immediately upon being advised by the party of the second part of her permanent residence to send to her by freight prepaid all of her personal effects including a piano, pictures, radio, books, lamps and dishes.

“10. That party of the first part agrees that he will pay the premium on a certain policy of life insurance in the sum Two Thousand Dollars (\$2000) in which the party of the second part is beneficiary and she shall remain the beneficiary, said policy of insurance being known as a Yeomen Beneficiary certificate.

In Witness Whereof, the parties hereto have hereunto set their hands in duplicate this 20th day of February 1929.”

The Case Came On For Trial before the court sitting without a jury at Helena, Montana. The plaintiff was represented by Messrs. Wellington D. Rankin and Arthur P. Acher, its attorneys. The defendant Clara Kohler was present in court in person and represented by Messrs. Paul W. Smith and David R. Smith, her attorneys; and the defendant Daisy S. Kohler was present in court in person and represented by Mr. T. H. MacDonald, her attorney.

Messrs. S. C. Ford, E. G. Toomey and C. A. Spaulding, all of Helena, Montana and members of the bar of this court, called as witnesses for the plaintiff were duly sworn and examined and each of them stated that in his opinion the services rendered by the attorneys for the plaintiff in the case

at bar were reasonably worth the sum of \$250.

Daisy S. Kohler, called as a witness on her own behalf was sworn and testified. While this witness was on the stand "defendant Daisy S. Kohler's Exhibit 2", a copy of a letter said to have been sent by the defendant Clara Kohler to James Victor Kohler, now deceased, on January 17, 1929, (R. pp. 14-15): "Exhibit 3 for Clara Kohler", a letter said to have been addressed by one P. G. Schroeder [27] to the defendant Daisy S. Kohler under date of March 7, 1931, in which, among other things, the writer stated: "I was in Mr. Kohler's store yesterday and he asked about a life insurance policy which I believe he said was with The American Yeomen, and he said he would like to have this policy returned to him. I do not seem to remember very much about this matter in connection with your original deal with him. Would you mind writing at your convenience and telling me how this matter stands." (R. p. 19); "Exhibit 5 for Clara Kohler", said to be a copy of a letter written by the defendant Daisy S. Kohler to said P. G. Schroeder, under date of March 10, 1931, in reply to the letter identified as "exhibit 3 for Clara Kohler", in which the writer says: "In regard to the insurance policy that Mr. Kohler would like returned to him. I do not feel that it is necessary to make any reply for Mr. Kohler—but, to you, for your own personal knowledge I will be glad to tell you that Judge Smith has the original contract, and it states that the policy had been given to me, and that Mr. K. was to keep

up the payment on it. \* \* \* I helped equally with him to pay for the policy for 30 yrs. and for my childrens rights, as well as mine, I do not see that it is right for me to give it to Miss Hardie. She no doubt will outlive us both, and I believe the children should have the benefits, and that just brings a question to my mind. Would my children benefit by the policy if I were to die before Mr. K. I suppose if I refuse to give him the policy he will stop the payments. I would be glad to have your advice in this matter, wish I were near enough to talk it over with you \* \* \*” (R. p. 21): “Exhibit 6 for Clara Kohler” a letter addressed by P. G. Schroeder to the defendant Daisy S. Kohler under date of March 24, 1931, in which he says: “I talked with Judge Smith about the life insurance policy and he brings up several points which may be of interest. For one thing we all know that with an assessment company, the insured can very quickly lose all rights under the [28] policy and have it declared void by non-payment of the stated assessment. Then the matter of the terms and conditions as outlined in the policy. With a fraternal policy it would probably be found references made to the constitution and by laws, so before any one can really learn very much about what can or what can not be done, it is necessary to read all of these things. Judge Smith suggests that under some conditions he has known of a fraternal body, whatever its name is, entirely refuse to pay a loss on a policy when the beneficiary of record is no longer living at the time of the death

of the insured. He says further that he doubts whether this company would pay a loss to you now that the insured has another wife. The policy probably emphasises the fact that the next of kin would be recognized and you being removed from this situation, there is grave doubt in his mind whether you would ever realize anything from the policy. The suggestion, therefore, is that you read all these documents carefully and see what light may be thrown on the subject." (R. pp. 21-22); "Exhibit 4 for Clara Kohler", a letter addressed to P. G. Schroeder by the defendant Daisy S. Kohler under date of April 7, 1931, in which she says: "Your letter regarding the insurance, followed me over to Pullman, where I was supplying for two weeks, and back here, so that I have only had it a few days. The Yeomen lodge here, advise me to write to the home office, and give them certain information which I do not possess so I am relying on your generosity again to ask if you will find out for me, in what public record our agreement, at time of divorce, is recorded. The lodge here seem to think, in as much as Mr. Kohler mentioned giving me the Yeomen policy, and saying he would keep it up for me, in his agreement might make it valid. They suggest that I know just where this agreement is recorded, number of page etc. so that I can give this information to the head office when I write. I believe Judge Smith has this agreement too—if you cared to look at it. Would it not be a good idea to ask Mr. [29] Berry, living over the auditorium,

who is sec'y for the Yeomen there, if Mr. K. has kept up his payments or perhaps you know this from Mr. Kohler himself. In my reply to your letter before, perhaps I was a little rude in my reply to be given Mr. Kohler. I really do not want to be any thing but kind to him, but I remember at the moment I read your letter, I felt that he was trying to take the little I had away from me, and I was bitter for the moment, but now I realize he cannot take any eternal good from me, and that is all that counts, so if you think I should give him an answer, you may say I am thinking it over." (R. pp. 22-23); and, "Exhibit 7 for Daisy S. Kohler", a letter addressed "by The Brotherhood of American Yeomen, by Geo. F. Wall, Secretary" to the defendant Daisy S. Kohler, under date of April 30, 1931, in which the writer says: "We have referred your letter of April 21st to our General Counsel, Mr. H. W. Pitkin. He suggested that we advise you that we are now attempting to secure a change in the laws regarding the payment of the benefits of a certificate to a divorced spouse. In his opinion, this change will probably be made in the laws within the next two years and his suggestion is that you allow the beneficiary to stand on this certificate as it now is as under the new law, which we are trying to have passed, a divorced husband or wife may secure the benefits of a certificate." (R. pp. 26-27); and, "Exhibit 8 for plaintiff", a letter addressed to Nuzum and Nuzum, Attorneys-at-Law, Columbia Building, Spokane, Washington, then



representing the defendant Daisy S. Kohler, by the "Assistant to the General Counsel" of the plaintiff herein, under date of November 17, 1933, in which the writer says: "Last summer we wrote you a letter stating that we were ready and willing to pay the sum due, to-wit: \$2,000.00 if it could be decided who was the proper beneficiary so that the company might be relieved of all responsibility. We stated to you at that time that Attorney Paul W. Smith, Penwell Block, Helena, Montana represented Mrs. Clara Kohler. We have been waiting since that date for some reply as to whether the parties interested could come to some agreement in regard [30] to how the proceeds would be paid. We will wait a few days longer and unless we hear from you, we will file a bill of interpleader under the Federal Interpleader statute and let the court determine the proper party to whom the benefits should be paid. We are also writing the attorney at Helena again." (R. p. 28), were offered and received in evidence.

Clara Kohler, called as a witness on her own behalf, was sworn and testified (R. pp. 29 etc.). During the course of her examination

**"EXHIBIT 9 FOR DAISY S. KOHLER**

was offered and received in evidence. This exhibit is in words and figures as follows:

"Know All Men By These Presents, That I Daisy Kohler, of the City of Helena, County of Lewis and Clark, State of Montana, the party of the first part

for and in consideration of one dollar (\$1.00) lawful money to me in hand paid by J. Victor Kohler of the said City of Helena, the party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said party of the second part, his executors, administrators and assigns, an undivided one-half interest of, in and to the goods, wares, merchandise, fixtures, accounts and good will of the Kohler Art Store, and an undivided one-half interest of, in and to the goods, wares, merchandise, fixtures, accounts, and good will of the Kohler Mortuary, being all my interest in and to said Kohler Art Store Located at No. 3 North Main Street in said City of Helena and Kohler Mortuary located at No. 4 Jackson Street, in said City of Helena, and all property pertaining thereto, subject to all existing liabilities against said business and each thereof the said party of the second part accepting this bill of sale assumes and agrees to pay all of said liabilities and agrees to save the said party of the first part harmless of and free from the payment of the same or any part thereof, the party of the first part never having participated in contracting any of said liabilities and never having assumed any responsibility thereof.

“To Have and to Hold the same, to the said party of the second part, his executors, administrators and assigns forever.

“In Witness Whereof I have hereunto set me hand and seal the ninth day of September, 1930.

[Seal]                      (Signed) DAISY KOHLER.”

Among other things this witness testified that the plaintiff herein was at all times willing and ready to pay the money involved in this suit but did not know who was entitled to it. (R. p. 35, lines 26-30)

P. G. Schroeder, called as a witness on behalf of the defendant Clara Kohler was sworn and testified. He stated among other things, that he "recalled being in a conversation with Daisy S. Kohler, J. [31] Victor Kohler and Clara Kohler during the months of August and September, 1930" (R. p. 36, lines 30-32); the object of the meeting was for the purpose of accomplishing, if possible, a settlement of the differences existing between J. Victor Kohler and Daisy S. Kohler relating to the alimony property settlement or agreement entered into between J. Victor Kohler and the defendant Daisy S. Kohler at the time of their divorce (R. p. 37). This witness said: "Daisy Kohler, came to my office and explained that she was having great difficulty in securing payments under this alimony agreement and asked for my suggestions as to what might be accomplished to secure her payments under this contract from J. Victor Kohler. This resulted in conferences between Mrs. Daisy S. Kohler and J. Victor Kohler. These conferences were sometimes held in the office of J. Miller Smith and sometimes at Brady's office. He was a public accountant. Brady was called in to make an audit of Kohler's business affairs. The object of this was to determine whether or not it was possible to get Mr. Kohler to meet some of these conditions in the ali-

mony agreement. The financial statement made by Mr. Brady indicated that Mr. Kohler's affairs were not in good condition at all and it seemed almost useless to expect him to comply with the terms of this agreement. I suppose a half dozen or more meetings were held and it finally resulted in an offer and acceptance by Mr. Kohler of a settlement of \$4,000—\$1,000 of that to be in cash. A note was given for the balance of the \$3,000." (R. p. 37 line 20, p. 38 line 7). "So far as I recall I never heard the question of the life insurance policy mentioned but once and at that time Daisy Kohler told me that she had in her possession this life insurance policy, explaining that it was a fraternal concern and she asked me if she should not keep it. I suggested that perhaps the policy was of very little value, for two or three reasons—one was that Mr. Kohler could discontinue the premium payments and the other that Mr. Kohler's own life expectancy might be twenty or thirty [32] years, and also that the fraternal association might not last as long as he lived. So I suggested to her that she drop the insurance matter and say nothing more about it. That is the only time I ever heard the matter mentioned at all. They, themselves, might have talked it over at times, but I heard of it only once, just as I said." (R. p. 38, lines 15-29) This witness further testified that a cashier's check for \$1,000, payable to the order of the defendant Daisy S. Kohler, was handed to him by J. Victor Kohler, now deceased, along with the note for \$3,000. In that connection he

said "I have no knowledge of whose money it was. It was a cashier's check issued by the Union Bank, so it did not indicate whose money it was, or from what source it came." (R. pp. 38, line 29 to p. 39, line 7) Concerning the defendant Clara Kohler this witness said: "I seldom, if ever, talked with Clara Kohler. She was always in the back ground. All negotiations were with J. Victor Kohler."

Concerning the payment of this \$1,000 the defendant Clara Kohler testified that she saw the defendant Daisy S. Kohler in Kohler's Art Store on Main Street, in Helena, Montana, about September 9, 1930; that the defendant Daisy S. Kohler and J. Victor Kohler, now deceased, then had a conversation in her presence about the "Yeomen insurance policy." "They were trying to make some kind of agreement or settlement at the time and Mr. Kohler asked her to give up the policy and she agreed to do it if we would pay her \$1,000 in cash;" that the \$1,000 was paid with money of the defendant Clara Kohler. In that connection this witness said: "I paid the \$1,000 because I felt that we would get the policy back and we would have some protection. Mr. Kohler was not well at the time. The business was not good at that time." Clara Kohler also testified that the premiums on the insurance policy were paid by her from her own funds from September 9, 1930, up to the time of the death of J. Victor Kohler. When asked "Why did you make the payments" she replied "Because the business was in a bad condition and I had a little money of

my own and I used it for the payments.” (R. pp. 29-30). [33] This testimony stands entirely uncontradicted on the record. The witness P. G. Schroeder also testified that “Exhibit 3 for Clara Kohler” was a letter written by him to the defendant Daisy S. Kohler relative to the insurance policy involved in this case “at the request of Mr. Kohler”: that “Exhibit 6 for Clara Kohler” is a copy of a letter which he also wrote to the defendant Daisy S. Kohler about the insurance (R. p. 34 lines 23-33). Referring to the agreement between J. Victor Kohler, now deceased, and the defendant Daisy S. Kohler, this witness testified that “Mr. Kohler acknowledged an indebtedness of \$4,000. He said he could not pay the \$4,000 in cash, but he could pay \$1,000 in cash, and he said ‘I can give you and will give you a note for \$3,000 payable on the monthly instalment plan’”. Also that the debt of \$4,000 “was intended to be a settlement of all these matters described by and agreement known as an alimony agreement” and when questioned by the court stated that it was his understanding that “It was in settlement of the alimony agreed on.” When asked: “When, definitely was this agreement for the settlement of the alimony matters entered into” this witness replied: “The note is dated September 9 and the check which Mr. Kohler gave was delivered on the 17th, so it would be safe to say that the matter was finally settled and closed on the 17th of September.” (R. p. 40, lines 1-22).

The witness P. G. Schroeder also testified that “Exhibit 9”, a “Bill of Sale from Daisy S. Kohler

of an undivided one half interest in the mercantile business” was delivered at the time of the delivery of the cashier’s check for \$1,000 and the J. Victor Kohler note for \$3,000—as “part of the same transaction.” That the final agreement as to the particular sum of money to be paid to the defendant Daisy S. Kohler was made in Judge Smith’s office, “and he then went to Mr. Kohler’s store and repeated this proposal that he pay \$4,000, having in mind also that the sum of money must be within Mr. Kohler’s ability to pay, and it was thought under the [34] circumstances that Mr. Kohler never could pay any obligation greater than this \$4,000. Mr. Kohler accepted that proposal when I went up to his store and told him about it.” (R. p. 41, lines 6-30) When asked—do you know exactly what this agreement was this witness answered: “Well as near as any one; it apparently was not reduced to writing, at least not to my knowledge. My understanding of the negotiations and conversations was that owing to the fact that the alimony agreement was so burdensome and could not possibly be complied with, this agreement was to supercede that whole agreement, and this was to be a new one.” (R. p. 41, Line 32, p. 32, Line 6)

Specific reference to the bill of sale from the defendant Daisy S. Kohler to J. Victor Kohler, now deceased, this witness said: “It was part of the general settlement; it was subsequent to the negotiations. Mrs. Kohler deeded this one half interest in the mercantile business to Mr. Kohler and Mr.

Kohler in turn paid by note and check in the sum of \$4,000—\$1,000 in cash and note for \$3,000. The main object in making this bill of sale and in getting Mr. Kohler to accept it was so that she might be relieved of any further financial responsibility in the event of bankruptcy—if that makes it clear.”

At the close of oral testimony the court directed that the application of J. Victor Kohler, now deceased, for the beneficiary certificate involved in this suit, the medical examination of the insured, the constitution and by-laws of the plaintiff company, and any amendments thereto, be delivered to the court by plaintiff's counsel with the certificate of the secretary under the seal of the plaintiff here to the effect that they are the by-laws and constitution in force at the time of the issuance of the first policy, at the time of the issuance of the second policy and at the time of the death of the deceased Kohler and also that plaintiff's counsel furnish the court with a certified copy of the laws of Iowa with reference to fraternal benefit associations in force at the time of [35] the issuance of the original policy involved in this suit and in force at the time of the issuance of the second policy issued to the deceased Kohler. These matters properly certified were filed by plaintiff's counsel in this suit.

Statutory Law of Iowa relating to fraternal benefit associations.

From the certified statutes so furnished it appears and the court so finds that at the time the



plaintiff company issued to James Victor Kohler, now deceased, its certificate No. 177490, providing for death benefits in the sum of \$2000 it was and at all times since then it has been provided by statute in Iowa as follows:

1. A fraternal benefit association is hereby declared to be a corporation, society, or voluntary association formed or organized and carried on for the sole benefit of its members and their beneficiary and not for profit and having a lodge system, with ritualistic form of work and representative form of government. C. (97, Sec. 1822; S. 13, Sec. 1822; C. '24, '27, '31, Sec. 8777;

2. Such association shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age, provided the period of life at which payment of physical disability on account of old age commence shall not be under seventy years, subject to compliance by members with its constitution and by-laws. C. '97, Sec. 1822; S. 13, Sec. 1822, C. '24, '27, '31, Sec. 8778;

3. Such associations shall be governed by this chapter, and shall be exempt from the provisions of the statute of this state relating to life insurance companies, except as hereinafter provided. C. '97, Sec. 1825; C. '24, '27, '31, '35, Sec. 8791;

4. No contract between a member and his beneficiaries that the beneficiary or any person for him

shall pay such members assessments and dues, or either of them, shall deprive the member of the [36] right to change the name of the beneficiary. C. '97, Sec. 1834; C. '24, '27, '31, and '35, Sec. 8792;

5. All such associations shall upon the issuance or renewal of any beneficiary's certificate attached to such certificate or endorsed thereon a true copy of any application or representation of the member which by the terms of such certificate are made a part thereof. C. '97, Sec. 1826; C. '24, '27, '31, and '35; Sec. 8793;

6. The omission so to do shall not render the certificate invalid, but if any such association neglects to comply with the requirements of Section 8793: it shall not plead or prove the falsity of such certificate or representation or any part thereof in any action upon such certificate, and the plaintiff in any such action, in order to recover against such association, shall not be required to either plead or prove such application or representation. C. '97, Sec. 1826, C. '24, '27, '31 and '35; Sec. 8794;

7. Such association may be sued in any county in which is kept the principal place of business, or in which the beneficiary contract was made, or in which the death of the member occurred; but actions to recover old age, sick or accident benefits may, at the option of the beneficiary, be brought in the county of his residence. C. '97, Sec. 1827, C. '24, '27, '31, and '35, Sec. 8795;

8. No fraternal organization created or organized under the provisions of this chapter shall

issue any certificate of membership to any person under the age of fifteen years, or over the age of sixty-five years, or unless the beneficiary under such certificate shall be the wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, step-children, child by legal adoption, legal representative, or to a person or persons dependent upon the member; provided that societies whose membership is confined to members of any one religious denomination may be permitted to provide that [37] benefits under their certificates of membership may be paid to educational, religious or charitable or benevolent institutions. C. '97, Sec. 1824, C. '24, '27, '31, and '35, Sec. 8785;

9. If after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the governing body or board of the society to make such institution his beneficiary. C. '24, '27, '31 and '35, Sec. 8786;

10. Within the above restrictions each member shall have the right to designate his beneficiary and from time to time to have the same changed in accordance with the laws, rules and regulations of the society. 38 G. A. Ch. 240, approved April 16, 1919, C. '24, '27, '31, '35, Sec. 8787;

11. No beneficiary shall have or obtain any vested interest in said benefit until the same has become due and payable upon the death of said member. 38 G. A. Chp. 240, approved April 16, 1919, c. '24, '27, '31 and '35, Sec. 8788;

12. Any society may, by its laws, limit the scope of beneficiaries within the above classes, 38 G. A. Ch. 240, approved April 16, 1919, C. '24, '27, '31, '35, Sec. 8789.

Statutory Law in Montana relating to fraternal benefit associations.

The court also finds:

First. That at all times since April 1, 1911, it was and now is provided by statute in Montana as follows, to-wit:

“Fraternal benefit societies defined. Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provisions for the payment of benefits in accordance with section 6309, is hereby declared to be a fraternal benefit society.” (Sec. 1, ch. 140, laws 1911, Sec. 6305, R. C. M. 1921 and 1935.)

2. “Lodge system defined. Any society having a supreme governing or legislative body and subordinate lodges or [38] branches by whatever name known, into which members shall be elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold

regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system." (Sec. 2, Ch. 140, laws 1911, Sec. 6306, R. C. M. 1921 and 1935.)

3. "Representative form of government defined. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and provided further, that the meetings of the supreme or governing body, and the election of officers, representatives, or delegates shall be held as often as once in four years. The members, officers, representatives, or delegates, or delegates of a fraternal benefit society shall not vote by proxy." (Sec. 3, Ch. 140, laws 1911, Sec. 6307, R. C. M., 1921 and 1935)

4. "Benefits. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the re-

sult of disease, accident, or old age; provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent, per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustments.” (Sec. 5, Ch. 140, laws 1911, Sec. 6309, R. C. M. 1921 and 1935) [39]

5. "Certificate. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or if a voluntary association, the articles of association, the constitution, and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions, or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution, or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership." (Sec. 8, Ch. 140, Laws 1911, sec. 6313, R. C. M. 1921 and 1935)

Second. That at all times from April 1, 1911, down to July 1, 1929, the law of Montana relating to the classes of persons to whom death benefits might be paid was as follows, to-wit:

“Beneficiaries. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, ascending or descending, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules, or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may, by its laws, limit the scope of beneficiaries within the above classes.” (Sec. 6, Ch. 140, laws 1911, Sec. 6311, R. C. M. 1921.)

Third. That by an act approved March 8, 1929, effective July 1, 1929 (Sec. 90, R. C. M. 1921 and 1935) Sec. 6311 of the Revised Codes of Montana, 1921, just quoted, was amended by inserting therein the words “parents by legal adoption” immediately after the “children by legal adoption”. (Sec. 1, Ch. 84, laws 1929)



Fourth. That by an act approved March 20, 1931, effective [40] July 1, 1931 (Sec. 90, R. C. M. 1921 and 1935) said Sec. 6311 of the Revised Codes of Montana, 1921, amended as aforesaid, was further amended by adding the words "to a person or persons upon whom the member is dependent or to the member's estate if neither wife, husband, child or parent be living, and in any event to a trustee or trust company" immediately after the words "children by legal adoption" appearing in said Section 6311, amended as aforesaid.

Fifth. That at all times on and after April 1, 1911, it has been provided by statute in Montana as follows, to-wit:

"Certificate. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions, or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, con-

stitution, or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership." (Sec. 8, Ch. 140, Laws 1911; Sec. 6313, R. C. M., 1921 and 1935.)

The court further finds that *is* appears from the copies of the Constitution and By-Laws of The Brotherhood of American Yeomen and amendments to each thereof, certified as required by Law, Sec. 6313, R. C. M., 1921 and 1935, as follows, to-wit:

First. That at all times on and after September 1, 1921, except as hereinafter noted, the articles of incorporation of The Brotherhood of American Yeomen provided, among other things, as follows, to-wit:

1. "We, the undersigned, hereby associate ourselves, our successors and assigns into a body corporate pursuant to the provisions of Chapter 9, Title IX, of the 1897 Code of Iowa, and the [41] amendments thereto, assuming all the powers and privileges now conferred, or which may hereafter be conferred upon such corporations under the laws of the State of Iowa, and do hereby adopt the following articles of incorporation." (Constitution and By-Laws effective September 1, 1921; Edition of

January 1, 1924, Edition of January 1, 1926; Edition of January 1, 1928; Edition of June 12, 1929; and, Edition of January 14, 1932);

2. "The name of the association shall be the Brotherhood of American Yeomen;" Article I id;

3. "Its principal place of business shall be at Des Moines, Iowa; and, this association may transact business in the United States and the Dominion of Canada;" (Article II id.)

4. "The purpose of said association shall be to unite in a fraternal association all acceptable white persons between the ages of sixteen and sixty years, at nearest birthday, (changed to between the ages of fifteen and sixty-five June 13, 1925); (Article III id.)

5. "It shall have a lodge system and a ritualistic form of work, and the affairs of the association shall be conducted for the sole benefit of its members and their beneficiaries, as provided by the laws of the state in which the association shall conduct business, and not for profit, and to that end it shall provide for and pay to its members or their beneficiaries, death and disability benefits; \* \* \* (amended effective June 13, 1925, by striking out the words 'by the laws of the state in which the association shall conduct business' and inserting in lieu thereof the words 'by the laws of the State of Iowa'.)" (Article III id.)

6. "This association shall have a representative form of government. \* \* \*." (Article IV id.)

Second. That at all times on and after September 1, 1921, except as herein noted, the By-Laws of

The Brotherhood of American Yeomen provided, among other things, as follows, to-wit: [42]

1. The Object of this association shall be the mutual uplifting of the members of the association, the practice of fraternal love, and to bestow substantial benefits upon him and his beneficiaries as may be permitted by the laws of the state wherein this association shall operate, \* \* \*. Sec. 3, By-Laws effective September 1, 1921; November 15, 1923; June 13, 1925; January 1, 1928; June 12, 1929; and, January 14, 1932.

2. The Liability of this association for the payment of benefits upon its certificates, for the social or other privileges of membership, shall not begin until all the acts, qualifications and requirements prescribed for the applicant in these By-Laws shall have been fully complied with by him, nor until all acts required of the local examiner and the home-stead officers shall have been fully complied with, nor until his application shall have been approved by the Medical Director and a benefit certificate issued thereon and personally delivered to applicant while in good health. A strict compliance with each and all of the details above referred to shall be a condition precedent to the validity of each and every benefit certificate issued by this association. Sec. 144, By-Laws effective September 1, 1921; November 15, 1923; Sec. 105 of By-Laws effective June 13, 1925; Sec. 101 of By-Laws effective January 1, 1928; amended effective June 12, 1929, carried into By-Laws effective January 14, 1932, to read as follows:

“The liability of this association for social or other privileges or membership shall not begin until the applicant shall have made all the required payments, nor until his application shall have been approved by the Medical Director and a benefit certificate issued thereon and personally delivered to the applicant while in good health. A strict compliance with each and all of the details above referred to shall be a condition precedent to the validity of each and every benefit certificate issued by this association.” Sec. 102 By-Laws effective June 12, 1929 and Sec. 102, By-Laws effective January 14, 1932. [43]

3. No Waiver Permitted. No officer of this association or any person or persons whomsoever is authorized or permitted to waive any of the provisions of these By-Laws, and such officers and persons are hereby prohibited from waiving any provisions of these By-Laws. Sec. 146, By-Laws effective September 1, 1921; By-Laws effective January 1, 1924, amended as Sec. 107 of By-Laws effective June 13, 1925, to read as follows:

No homestead, nor any of its officers or members, nor any local medical examiner or person engaged in soliciting applications for membership, shall have the power or authority to waive any of the provisions of the constitution and by-laws of this association, and the constitution and by-laws, with all changes, additions and amendments to each thereof hereafter enacted, shall bind each member and his beneficiaries, and copies of the constitution and by-

laws with all changes, additions and amendments to each thereof or any of them certified by the Secretary of the Association, shall be received and accepted as prima facie proof of the terms and conditions thereof.

Said Sec. 107 of the By-Laws effective June 13, 1925, was carried into the by-laws effective January 1, 1928, as Sec. 103, into the By-Laws effective June 12, 1929 and January 14, 1932 as Sec. 104.

4. That Sec. 159 of the By-Laws of the Brotherhood of American Yeomen, effective September 1, 1921, is in words and figures as follows, to-wit:

“Should any member in good standing desire to change his beneficiary or beneficiaries, he may do so by returning his certificate to the Correspondent of his Homestead, together with his written request endorsed thereon for the proposed change, giving the name of the desired beneficiary or beneficiaries, together with their relation to the member. Said request shall be accompanied by a fee of fifty cents, and the Secretary shall endorse on said certificate said change and return said certificate [44] to the said member. In case the beneficiary member makes his spouse the beneficiary in his certificate and said member and his spouse are divorced or legally separated by order of a court of competent jurisdiction before the death of the member, and said member makes no change in his beneficiary as named in the certificate, the benefits under said certificate shall be paid to the legal heirs of such deceased member. If for any cause the beneficiary

named in the certificate is barred by law from receiving the benefits provided for in said certificate, the legal heirs of the deceased member shall become the beneficiaries, and the benefits provided for in said certificate shall be paid to such legal heirs."

5. That said Sec. 159 was amended effective June 13, 1925, to read as follows, to-wit:

"Should any member in good standing desire to change his beneficiary or beneficiaries, he may do so by returning his certificate to the Correspondent of his Homestead, together with his written request endorsed thereon for the proposed change, giving the name of the desired beneficiary or beneficiaries, together with their relation to the member. Said request shall be sent to the Secretary, accompanied by a fee of fifty cents, and the Secretary shall endorse on said certificate said change and return said certificate to the said member.

"If for any cause a beneficiary named in the certificate is barred by law from receiving the benefits provided for in said certificate or in case the member makes his spouse the beneficiary in his certificate and said member and his spouse are divorced, or legally separated by order of a court of competent jurisdiction before the death of the member, and said member makes no other disposition of the benefits, then the benefits which said barred beneficiary would have taken had he not been barred, or which the surviving spouse would have taken but for said divorce or order of separation, shall be paid to the person or persons who would have [45] been

entitled to receive the same if the beneficiary barred or divorced or separated spouse, as the case may be, had pre-deceased the insured and the insured had named no other beneficiary." Sec. 123, By-Laws effective June 13, 1925;

6. That said section of the By-Laws of The Brotherhood of American Yeomen as so amended was carried into the By-Laws thereof effective January 1, 1928, as Sec. 112;

7. That said Sec. 159 of the By-Laws of The Brotherhood of American Yeomen effective September 1, 1921, amended as aforesaid, was again amended and carried into the By-Laws of said association effective June 12, 1929 and January 14, 1932 as Secs. 113 and 114, which are in words and figures as follows, to-wit:

"Should any member in good standing desire to change his beneficiary or beneficiaries, he may do so by returning his certificate to the Local Secretary of his Homestead, together with his written request endorsed thereon for the proposed change, giving the name of the desired beneficiary or beneficiaries, together with their relation to the member. Said request shall be sent to the Secretary, and the Secretary shall endorse on said certificate said change and return said certificate to the said member."

"If for any cause a beneficiary named in the certificate is barred by law from receiving the benefits provided for in said certificate or in case the member makes his spouse the beneficiary in his certificate and said member and his spouse are divorced,



or legally separated by order of a court of competent jurisdiction before the death of the member, and said member makes no other disposition of the benefits, then the benefits which said barred beneficiary would have taken, had he not been barred, or which the surviving spouse would have taken but for said divorce or order of separation, shall be paid to the person or persons who would have been entitled to receive the same if the beneficiary barred or divorced or spouse separated by order of court, as the case may [46] be, had pre-deceased the insured and the insured had named no other beneficiary.

“Provided, however, that payment of the benefits to the beneficiary designated in a certificate shall relieve the Association from all liability under said certificate unless prior to the date of said payment the Secretary of the Association shall have received notice in writing that the designated beneficiary is barred by law from receiving said benefits or was divorced or legally separated from the member at the time of the death of the member.”

8. Lost Certificate. That Sec. 160 of the By-Laws of The Brotherhood of American Yeomen, effective September 1, 1921, is in words and figures as follows, to-wit:

“In case a benefit certificate is lost or destroyed or otherwise out of the possession or control of the member insured, a new certificate may be issued upon the filing of a sworn statement by the member with the Correspondent of his Homestead, accom-

panied by a fee of 50 cents, which statement and fee shall be forwarded under seal of the Homestead to the Secretary, who shall thereupon issue a new certificate; provided, that the explanation contained in the sworn statement is satisfactory to the Secretary.”

That said Section was carried into the By-Laws of said Association, effective November 15, 1923, as Sec. 160, and, effective June 13, 1925 as Sec. 124.;

That said Section so carried into said By-Laws effective in 1923 and 1925, as aforesaid, was amended, effective January 1, 1928, to read as follows, to-wit:

“In case a benefit certificate is lost or destroyed or otherwise out of the possession or control of the member insured, a new certificate may be issued upon the filing of a sworn statement by the member with the Correspondent of his Homestead, which statement shall be forwarded under seal of the Homestead to the Secretary who shall thereupon issue a new certificate; provided, that the [47] explanation contained in the sworn statement is satisfactory to the Secretary.” (By-Laws 1928, Sec. 113.)

That said Section 113, effective January 1, 1928, as aforesaid, was amended effective June 12, 1929, to read as follows, to-wit:

“In case a benefit certificate is lost or destroyed or otherwise out of the possession or control of the member insured a new certificate may be issued upon the filing of a sworn statement and written request by the member with the Secretary who shall

thereupon issue a duplicate certificate, provided the explanation contained in the sworn statement is satisfactory to the Secretary. The Secretary will furnish on request a proper form for said request and affidavit." (By-Laws of 1929, Sec. 115.)

That said Section 115 of the By-Laws of 1929 was carried into the By-Laws of the Brotherhood of American Yeomen, effective January 14, 1932, as Section 115 thereof and the same has been continued in force from said last mentioned date.

The Court further finds the fact to be as follows, to-wit:

1. That at the time the Bill of Interpleader was filed herein on January 19, 1934, two adverse claimants, Mrs. Clara Kohler of Helena, Montana and Mrs. Daisy S. Kohler of Spokane, Washington, citizens of different states, were claiming to be entitled to the money admittedly due and owing from the plaintiff herein to either one or the other of them under and pursuant to the terms and conditions of its certificate of insurance No. 177490, providing for death benefits in the sum of \$2,000, wherein Daisy S. Kohler, then the wife of James V. Kohler, the insured, was named as beneficiary; or, its duplicate certificate of membership bearing the same number issued by it to the said James V. Kohler after his divorce from the defendant Mrs. Daisy S. Kohler, which provided for the payment of death benefits in the sum of \$2,000 to the defendant Clara Kohler, then and at all times thereafter to the time

of the death of said James V. Kohler, on May 9, 1933, the wife of said James V. Kohler. [48]

2. That at the time said Bill of Interpleader was filed as aforesaid the plaintiff herein neither had nor claimed any interest in the subject matter of said contention between the defendants Mrs. Daisy S. Kohler and Mrs. Clara Kohler, to-wit: The right to receive said sum of \$2,000; had incurred no independent liability to either of the parties defendant herein; did not in any respect collude with either of said defendants, but was perfectly indifferent between them; being in the position of a mere stakeholder;

3. That at the time said Bill of Interpleader was filed as aforesaid the plaintiff was uninformed and uncertain as to the respective rights of said defendants and could not then determine without hazard to itself to which of said defendants the money due upon said certificate of insurance No. 177490 or said duplicate certificate bearing the same number rightfully belonged and was then in doubt as to which of said defendants was right in her respective claim; had no means of satisfactorily ascertaining what facts were relied upon by either of said defendants in support of her claim of right; could not then pay over the money due upon said certificate of insurance No. 177490 or said duplicate certificate bearing the same number without taking upon itself the responsibility of determining doubtful questions of law and fact and incurring the risk of being subjected to great cost and expense in defending

itself and to a multiple payment of said indebtedness if it should finally appear that plaintiff had wrongfully determined in favor of either of said defendants and claimants at the expense of the other and without being involved in a multiplicity of suits;

4. That plaintiff has not at any time asked any relief herein at the request of either of said defendants but asks relief solely of its own free will to avoid being molested and injured touching the matters set forth in said Bill of Interpleader;

5. That prior to the filing of said Bill of Interpleader herein the plaintiff here attempted by correspondence with attorneys for [49] the said defendants and claimants to have them determine between themselves their respective rights to said \$2,000; that it was not until the latter part of November, 1933, that plaintiff was informed by said attorneys that there was no possibility of the parties interested, the parties defendant here, being brought to some agreement in regard to how said money should be paid, and it then appearing impossible for them to do so the plaintiff filed its Bill of Interpleader herein with reasonable diligence after having become satisfied that the rights of said defendants and claimants could only be determined by suit;

6. That at the time said Bill of Interpleader was filed herein as aforesaid, the plaintiff here paid the amount due under said certificate of insurance No. 177490 or said duplicate certificate of membership

bearing the same number, to-wit: the sum of \$2,000 into the registry of this court, and to abide the judgment of the court;

7. That \$150 is a reasonable attorney's fee to be allowed to the plaintiff in this case;

8. That on February 20, 1929, the bond of matrimony then existing between the said James Victor Kohler and the said Mrs. Daisy S. Kohler was dissolved by a decree of divorce duly given, made and entered of record in the district court of the First Judicial District of the State of Montana, in and for the County of Lewis & Clark;

9. That the defendant Mrs. Daisy S. Kohler was never dependent upon said James Victor Kohler at any time after the dissolution of said bond of matrimony as aforesaid;

10. That on February 20, 1929, said James Victor Kohler and the defendant Mrs. Daisy S. Kohler entered into a certain contract in writing for the settlement and adjustment of their property rights in contemplation of said decree of divorce, a copy of which is attached to the answer and cross complaint of the defendant Mrs. Clara Kohler, filed herein on March 30, 1934; [50]

11. That insofar as it is material at this point, said contract is in words and figures as follows, to-wit: "10. That party of the first part (James Victor Kohler, interpolated), agrees that he will pay the premium on a certain policy of life insurance in the sum of Two Thousand Dollars (\$2,000) in which the party of the second part (the defendant Mrs.

Daisy S. Kohler, interpolated), is beneficiary and she shall remain the beneficiary, said policy of insurance being known as a Yeomen Beneficiary Certificate;”

12. That on March 11, 1929, the said James Victor Kohler and the defendant Mrs. Clara Kohler were united in marriage and at all times thereafter up to the time of the death of said James Victor Kohler on May 9, 1933, were husband and wife;

13. That on September 9, 1930, in the City of Helena, County of Lewis & Clark, State of Montana, in consideration of the sum of \$4,000 represented as follows, to-wit: One Thousand Dollars (\$1,000) to be and which was paid to the defendant Mrs. Daisy S. Kohler in cash and the execution and delivery by said James Victor Kohler of a certain promissory note to the defendant Mrs. Daisy S. Kohler and which he did thereafter and pursuant to said agreement execute and deliver to her, the same being in words and figures as follows, to-wit:

“\$3,000.00

Helena, Montana,

September 9, 1930.

For value received I promise to pay to Daisy Kohler, or order, the sum of \$3,000.00 in the installments and within the times following, to-wit: The sum of \$50.00 on or before the 9th day of October, 1930, the sum of \$50.00 on or before the 9th day of November, 1930, and a like sum of \$50.00 on or before the 9th day of each and every month thereafter until said principal

sum is fully paid, together with interest thereon at the rate of six per cent per annum from date hereof until paid, interest payable monthly on or before the 9th day of each and every month; negotiable and payable at the Union Bank & Trust Company of Helena, Montana; and the makers and endorsers hereby waive presentment, demand, protest, and notice of each and all thereof and of non-payment, and I agree to pay reasonable attorneys fees in case of suit on this note because of default in payment of principal or interest or any part thereof."

"J. VICTOR KOHLER." [51]

The said James Victor Kohler paid and settled in full with the defendant Mrs. Daisy S. Kohler for all moneys, obligations, advantages and benefits conferred or intended to be conferred and then due and owing or which in the future would become due or owing under or by virtue of said decree of divorce and under or by virtue of said property settlement contract between said James Victor Kohler and the defendant Mrs. Daisy S. Kohler and the latter then and there promised and agreed to accept and receive the same in full settlement for all moneys, obligations, advantages and benefits conferred or intended to be conferred and then due and owing or which in the future would become due or owing to her under or by virtue of said decree of divorce or by virtue of said property settlement contract between said James Victor Kohler and the defendant



Mrs. Daisy S. Kohler and the latter then and there promised and agreed to satisfy in full and mark said decree and contract paid of record;

14. That at the same time and place and as a part of the same transaction the defendant Mrs. Daisy S. Kohler subscribed, acknowledged and delivered to said James Victor Kohler a certain instrument in writing, Exhibit "9" for Daisy S. Kohler, wherein and whereby, for value received, she granted, bargained, sold and conveyed unto the said James Victor Kohler and his executors, administrators and assigns an undivided one-half interest of, in and to the goods, wares, merchandise, and fixtures, accounts and good will of the Kohler Art Store, located at 3 North Main Street in the City of Helena, Montana, and an undivided one-half interest of, in and to the goods, wares, merchandise and fixtures, accounts and good will of the Kohler Mortuary, located at No. 4 Jackson Street in said city, and all property pertaining thereto subject to all existing liabilities against said businesses and each thereof, and the said James Victor Kohler by accepting said bill of sale assumed and agreed to pay all of said liabilities and agreed to save the defendant Mrs. Daisy S. Kohler from payment of the same or any part thereof; [52]

15. That immediately before subscribing, acknowledging and delivering said instrument in writing to said James Victor Kohler, as aforesaid, the defendant Mrs. Daisy S. Kohler caused an audit of his business affairs to be made by a public accountant for the purpose of determining whether

it was possible for him to meet the conditions of said decree of divorce and said alimony agreement between him and the defendant Mrs. Daisy S. Kohler; that the financial statement made by said public accountant indicated that Mr. Kohler's business was not in a good condition, in the words of the defendant Mrs. Daisy S. Kohler "The business was doing nothing—it was gone", and that he would not be able to continue to comply with the terms of said decree of divorce and said alimony agreement; that upon being informed of these facts the defendant Mrs. Daisy S. Kohler subscribed, acknowledged and delivered said instrument in writing to said James Victor Kohler for the purpose and with the intent on her part of getting out of the businesses referred to in said instrument in writing so that she would not be liable for one-half of the debts thereof; and that "the main object in making this bill of sale and in getting Mr. Kohler to accept it was so that she (the defendant Mrs. Daisy S. Kohler, interpolated) might be relieved of any further financial responsibility in the event of bankruptcy", as stated by the witness P. G. Schroeder;

16. That at the time said agreement was entered into by and between said James Victor Kohler and the defendant Mrs. Daisy S. Kohler on September 9, 1930, as aforesaid, it was understood and agreed by and between them that it "was to take the place of the agreement that was entered into \* \* \* at the time of the divorce", as stated by the defendant Mrs. Daisy S. Kohler while testifying herein as a witness on her own behalf; and that the

payment of said \$1,000 in cash and the subscribing and delivery of said note for \$3,000, paid subscribed and delivered, as aforesaid, was intended [53] to be in full settlement and satisfaction of all of the matters described in the agreement "known as the alimony agreement" made and entered into by said James Victor Kohler and the defendant Mrs. Daisy S. Kohler on February 20, 1929, a copy of which is attached, as Exhibit "B", to the Separate Answer and Cross Complaint of the defendant Mrs. Clara Kohler filed herein on March 30, 1934, as stated by the witness P. G. Schroeder;

17. That at the time the said \$1,000 was paid to the defendant Mrs. Daisy S. Kohler, as aforesaid, said James Victor Kohler was wholly unable to make said payment from his own funds, all of which was then well known to and understood by the defendant Mrs. Daisy S. Kohler;

18. That before said \$1,000 was paid in cash to the defendant Mrs. Daisy S. Kohler, as aforesaid, it was understood and agreed by and between her and James Victor Kohler that upon the payment of said \$1,000 in cash and the execution and delivery of the note mentioned and referred to in Finding Number Thirteen (13) above (page 43), she would give up and deliver to said James Victor Kohler said beneficiary certificate No. 177490 and renounce and give up any right or claim of right which she then had or claimed to have to, under or by virtue of the benefit certificate involved in this suit, and would make no claim thereon, thereunder or because thereof, all of which was then made known to and

understood by the defendant Mrs. Clara Kohler by said James Victor Kohler and the defendant Mrs. Daisy S. Kohler, with the intent in each of them that the defendant Mrs. Clara Kohler, acting in reliance thereon and in the belief that the defendant Mrs. Daisy S. Kohler would carry out her part of said agreement, would advance the \$1,000 which was agreed to be paid and which was paid by said James Victor Kohler to the defendant Mrs. Daisy S. Kohler in cash, as aforesaid;

19. That at the time it was understood and agreed by and between the defendant Mrs. Daisy S. Kohler and James Victor Kohler that [54] upon the payment of said \$1,000 in cash and the execution and delivery of the note mentioned and referred to in finding No. 13 above (page 43), she would give up and deliver to said James Victor Kohler said beneficiary certificate No. 177490 and renounce and give up any right or claim of right which she then had or claimed to have to, under or by virtue of the benefit certificate involved in this suit and would make no claim thereon, thereunder or because thereof and made the same known to the defendant Mrs. Clara Kohler, said promises were made by the defendant Mrs. Daisy S. Kohler without any intention of performing them or either or any of them and with the intent in her to deceive the defendant Mrs. Clara Kohler and with the intent and in the expectation that as a result of being so deceived by the defendant Mrs. Daisy S. Kohler the defendant Mrs. Clara Kohler would furnish to said James Victor Kohler, from her own funds, the \$1,000 which

was agreed to be paid and which was actually paid in cash by said James Victor Kohler to the defendant Mrs. Daisy S. Kohler.

20. That said \$1,000 so paid in cash as aforesaid was paid with the money of the defendant Mrs. Clara Kohler furnished by her to said James Victor Kohler for that purpose as a result of and in reliance upon said last mentioned agreement by and between said James Victor Kohler and the defendant Mrs. Daisy S. Kohler and in the belief that upon the payment of the same and the execution and delivery of said promissory note by said James Victor Kohler to the defendant Mrs. Daisy S. Kohler, as aforesaid, the latter would receive and accept the same in full settlement for all moneys, obligations, advantages and benefits conferred or intended to be conferred and then due and owing or which in the future would become due or owing to her under or by virtue of the decree of divorce and the property settlement contract between said James Victor Kohler and the defendant Mrs. Daisy S. Kohler hereinbefore more particularly mentioned and referred to and satisfy in full and mark said decree and contract paid of record; renounce and give up all right or claim of right which she then had or claimed to have to, under or by virtue [55] of the benefit certificate involved in this suit; and, would make no claim thereon, thereunder or because thereof;

21. That had it not been for her understanding of and reliance upon said agreement by and between said James Victor Kohler and the defendant Mrs.

Daisy S. Kohler, and the performance by the defendant Mrs. Daisy S. Kohler of her part of said agreement as aforesaid, the defendant Mrs. Clara Kohler would not have advanced said \$1,000 from her own funds to be used for the purpose aforesaid;

22. That the defendant Mrs. Daisy S. Kohler failed, refused and neglected to carry out her part of said agreement so entered into by and between said James Victor Kohler and the defendant Mrs. Daisy S. Kohler on September 9, 1930, as aforesaid; and did not give up or deliver to said James Victor Kohler said beneficiary certificate No. 177,-490 or renounce or give up any right or claim of right which she may then have had or claimed to have to, under or by virtue of the benefit certificate involved in this suit, notwithstanding the fact that said James Victor Kohler made demand upon her that she do so; but, on the other hand she, the defendant Mrs. Daisy S. Kohler, did make claim thereon, thereunder and because thereof thereafter and prior to the filing of the Bill of Interpleader herein as aforesaid, and at all times during the progress of this suit, and failed, refused and neglected to satisfy in full and mark said decree and contract paid of record;

23. That at no time after said \$1,000 was paid to the defendant Mrs. Daisy S. Kohler in cash and said note was executed and delivered to her by said James Victor Kohler, as aforesaid, was the defendant Mrs. Daisy S. Kohler dependent in any degree upon said James Victor Kohler for support, maintenance or assistance;

24. That at no time after said \$1,000 was paid to the defendant Mrs. Daisy S. Kohler in cash and said note was executed and delivered to her by said James Victor Kohler, as aforesaid, was there any obligation on his part, either moral, legal, or equitable, in any degree to support, maintain or assist her; [56]

25. That after September 9, 1930, the premiums on the benefit certificate involved in this suit were paid by the defendant Mrs. Clara Kohler with her own money; and,

26. The Court further finds the facts in issue in this suit generally in favor of the defendant Mrs. Clara Kohler and against the defendant Mrs. Daisy S. Kohler.

#### CONCLUSIONS OF LAW.

On the facts so found as aforesaid the Court concludes the law to be as follows, to-wit:

1. That the plaintiff herein has fully complied with the statute in such cases made and provided and should be discharged from further liability to the defendants Mrs. Clara Kohler and Mrs. Daisy S. Kohler, or either of them, based on, growing out of or arising from the issuance by it of its *of its* said certificate of insurance No. 177490, providing for death benefits in the sum of \$2,000, wherein the defendant Mrs. Daisy S. Kohler, then the wife of James Victor Kohler, the insured, and now deceased, was named as beneficiary; or, its duplicate certificate of membership bearing the same number issued by it to the said James Victor Kohler, after

his divorce from the defendant Mrs. Daisy S. Kohler, which provided for the payment of death benefits in the sum of \$2,000 to the defendant Mrs. Clara Kohler, then and at all times thereafter to the time of the death of said James Victor Kohler, on May 9, 1933, the wife of said James Victor Kohler; and that the said defendants and each of them should be enjoined permanently from instituting or prosecuting any suit or proceeding in any state court or in any other federal court on said certificate of insurance No. 177490 and said duplicate certificate of membership bearing the same number so issued by the plaintiff herein as aforesaid, or either of them. Act of May 8, 1926, c. 273, Secs. 1-3, 44 Stat. 416; subdivision (26) of Sec. 41, Title 28, U. S. C.;

2. That as at the time the Bill of Interpleader was filed herein on January 19, 1934, the plaintiff herein was charged merely with the duty of holding the money involved in this suit and paying it [57] over to the proper person, and plaintiff having paid said money into the registry of the court, there to abide the judgment of the court; and neither fault, bad faith nor unreasonable delay on its part having been shown, it is not justly chargeable with interest. 33 C. J. p. 202, Sec. 58; *Peterson v. Chorley*, ..... Cal. App. ...., 284 Pac. 956, 957; *Grover v. Sentell*, C. C. A. 5th C., 66 Fed. 179, 181;

3. That the plaintiff herein should be allowed and paid its costs and disbursements herein necessarily expended, including a reasonable attorney's fee hereby fixed at the sum of \$150 out of the money paid by it into the registry of the court, there to



abide the judgment of the court. *Mass. Mut. Life Insurance Co. v. Morris, et al.*, C. C. A. 9th C., 61 Fed. 2d. 104, and cases there cited; Act of May 8, 1926, c. 273, Sec. 1-3, 44 Stat. 416; subdivision (26) of Sec. 41, Title 28, U. S. C.; *Mutual Life Insurance Co. v. Bondurant*, C. C. A. 6th C., 27 Fed. 2d. 464, 465-6;

4. That in addition to the fees for other services rendered in this suit in equity, the Clerk of this court shall charge, collect and deduct therefrom one per centum of \$2,000 deposited by the plaintiff herein in the registry of the court, there to abide the judgment of the court, pursuant to statute,—the Acts of February 22, 1917, c. 113, 39 Stat. 929; February 25, 1925, c. 317, Secs. 1-3, 43 Stat. 976; and, May 8, 1926, c. 273, Secs. 1-3, 44 Stat. 416, Subdivision (26) and Sec. 44, Title 28, U. S. C., as amended, for receiving, keeping and paying out said money pursuant to said statute and by order of this court. R. S. Sec. 828, from act of Feb. 26, 1850, c. 80, Sec. 1, 10 Stat. 163, 167; sub-division 8 of Sec. 555, Title 28, U. S. C. *Mutual Life Insurance Co., et al. v. Phelps*, Clerk of District Court, C. C. A. 6th C., 27 Fed. 2d. 464, 466(5); *McGovern, et al. v. U. S. C. C. A. 7th C.*, 272 Fed. 262; *U. S. v. Payne, et al.* District Court, W. D. Washington, N. D., *Neterer*, 30 Fed. 2d. 960, 961-'2; *Miss. Mills Co. v. Cohn*, 150 U. S. 202, 204-'7; [58]

5. That at the time the plaintiff herein issued to James Victor Kohler, now deceased, its certificate of insurance No. 177490, providing for death benefits in the sum of \$2,000, wherein the defend-

ant Mrs. Daisy S. Kohler, then the wife of said James Victor Kohler, the insured, was named as beneficiary and at all times thereafter, for the purposes of this suit, the plaintiff herein was a fraternal benefit society within the meaning of the law of the states of Iowa and Montana. Iowa Code 1897, Secs. 1822, 1824, 1825, and 1834; Iowa Codes of 1924, 1927, 1931, Secs. 8777, 8778, 8785, 8786, 8788, 8789, and 8792; and, 38 G. A. Iowa, ch. 240, approved April 16, 1919; ch. 140, Laws of Montana, 1911, Secs. 6305, 6306, 6307, 6308, 6309, 6311, 6313; and 6321, R. C. M. 1921 and 1935;

6. Becoming a member of an incorporated beneficiary society is more than a contract; it is entering into a complex and abiding relation; the rights of members have their source in the constitution and by-laws of the corporation and can only be determined by resorting thereto, and such constitution and by-laws must necessarily be construed by the laws of the state of its incorporation. *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 550-'1; *Royal Arcanum v. Green*, 237 U. S. 532, 541-'2; *Bush v. Modern Woodman of America*, 182 Ia. 515, 162 N. W. 59, 60; *Booz, et al. v. Booz, et al.*, ..... Ia. ...., 167 N. W. 93, 94; *Styles v. Byrne*, 89 Mont. 243, 252-'3;

7. The statute of the state of Iowa is the organic law of the plaintiff in the case at bar. It is under this law that it lives, moves and has its being. From this law it gets its right to do business and by this law it is regulated and controlled. *Bush v. Modern Woodmen of America*, 182 Ia. 515, 162 N. W. 59,

60; *Royal Arcanun v. Green*, 237 U. S. 531, 542-'3; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 551; *Styles v. Byrne*, 89 Mont. 243; 254-'5;

8. The purpose and intent of the law making body in creating [59] and recognizing Fraternal Benefit Societies is not that they may do a general insurance business, but a fraternal business. *Bush v. Modern Woodmen of America*, 182 Ia. 515, 162 N. W. 59, 60; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 551; *Nitsche v. Security Benefit Association*, 78 Mont. 532;

9. The legislature of the state of incorporation has power to limit the classes of persons who may be beneficiaries of a fraternal benefit society. *Bush v. Modern Woodmen of America*, 182 Ia. 515, 162 N. W. 59, 60; *Richey v. Sovereign Camp Woodmen of the World*, ..... Ia. ...., 168 N. W. 276, 280; *Nitsche v. Security Benefit Association*, 78 Mont. 532, 546, 255 Pac. 1052; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 550-'1;

10. At the time the plaintiff herein issued to James Victor Kohler, now deceased, its benefit certificate No. 177490 providing for death benefits in the sum of \$2,000, wherein the defendant Mrs. Daisy S. Kohler, then the wife of said James Victor Kohler, was named as beneficiary, she was qualified to be designated as such thereunder by the laws of the states of Iowa and Montana. Iowa Code of 1897, Sec. 1824; R. C. M 1921, Sec. 6311; and, by the constitution and By-Laws of the Brotherhood of American Yeomen; Preamble; Article III of the Constitution of the Brotherhood of American Yeo-

men; Secs. 3 and 148 of the By-Laws of the Brotherhood of American Yeomen, effective September 1, 1921; John Hancock Insurance Co. v. Yates, 299 U. S. 178, 182-'3; American Surety Co. of New York v. Clarke, 94 Mont. 1, 9-10, 20 Pac. 2d. 831, 833; Styles v. Byrne, 89 Mont. 243, 252-'3, 296 Pac. 577; Richey v. Sovereign Camp Woodmen of America, ..... Ia. ...., 168 N. W. 276, 280(18);

11. The defendant Mrs. Daisy S. Kohler could neither have nor obtain any vested interest in said benefit certificate until the same had become due and payable on the death of James Victor Kohler, 38 G. A. Ia., Ch. 240, approved April 16, 1918; Ia. Code 1924, 1927, 1931 and 1935, Sec. 8788; Sec. 6, Ch. 140, Laws of Montana, 1911, [60] Sec. 6311, R. C. M. 1921 and 1935; Bush v. Modern Woodmen of America, 182 Ia. 515, 162 N. W. 59, 61; Holden v. Modern Brotherhood of America, 151 Ia. 673, 132 N. W. 329, 331; Schmidt v. Northern Life Association, 112 Ia. 41, 83 N. W. 800, 802; Nitsche v. Security Benefit Association, 78 Mont. 532, 546-'7, 255 Pac. 1052;

12. That said James Victor Kohler had the right from time to time to have the beneficiary designated in said benefit certificate No. 177490 changed in accordance with the laws, rules and regulations of the society. 38 G. A. Ia., ch. 240, approved April 16, 1919, Ia. Codes 1924, 1927, 1931 and 1935, Sec. 8788, Sec. 6, Ch. 140, Laws of Montana, 1911, Sec. 6311, R. C. M. 1921 and 1935; cases cited under conclusion of law No. 11; Sec. 159 of the By-Laws of the

Brotherhood of American Yeomen, effective September 1, 1921, Sec. 123, id., effective June 13, 1925, Sec. 112, id., effective January 1, 1928, Secs. 112 and 113, id., effective June 12, 1929 and January 14, 1932; *Bush v. Modern Woodmen of America*, 182 Ia. 515, 162 N. W. 59, 61; *Thomas v. Locomotive Engineer's Mutual Association*, ..... Ia. ...., 183 N. W. 628, 632; Sec. 6, Ch. 140, Laws of Montana, 1911, Sec. 6311, R. C. M. 1921 and 1935;

13. That immediately upon the entry of the decree of divorce in the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, on February 20, 1929, wherein and whereby, among other things, it was "Ordered, adjudged and decreed: I. That the bonds of matrimony heretofore existing between plaintiff (Mrs. Daisy S. Kohler, interpolated.) and defendant (James Victor Kohler, interpolated,) be and the same hereby are wholly and permanently dissolved and the parties hereto freed from all of the obligations thereof; \* \* \*;" She ceased to be qualified for designation as a beneficiary in said benefit certificate No. 177490 mentioned and referred to in conclusion of law No. 6 above; and thereupon she became and at all times thereafter she was and she now is entirely without right to claim or receive [61] any part or portion of the \$2,000 paid by the plaintiff herein into the registry of the court, there to abide the judgment of the court. Ia. Code 1897, Sec. 1824, Ia. Code of 1924, 1927, 1931, and 1935, Sec. 8785; Articles of Incorporation of the

Brotherhood of American Yeomen; Sec. 3, By-Laws of the Brotherhood of American Yeomen, effective September 1, 1921, November 15, 1923, June 13, 1925, January 1, 1928, June 12, 1929, and January 14, 1932; Sec. 144, By-Laws effective September 1, 1921 and November 15, 1923, Sec. 105, By-Laws effective June 13, 1925, Sec. 101, By-Laws effective January 1, 1928 and Sec. 102, By-Laws effective June 12, 1929 and January 14, 1932; Sec. 146, By-Laws effective September 1921 and January 1, 1924, Sec. 107, By-Laws effective June 13, 1925, Sec. 103, By-Laws effective January 1, 1928 and Sec. 104, By-Laws effective June 12, 1929 and January 14, 1932; Sec. 159, By-Laws effective September 1, 1921, Sec. 123, By-Laws effective June 13, 1925, Sec. 112, By-Laws effective January 1, 1928, and Secs. 113 and 114, By-Laws effective June 12, 1929, and January 14, 1932.

Said Section 159 of the By-Laws of the Brotherhood of American Yeomen, effective September 1, 1921, and all of the sections of the By-Laws referred to thereafter, provide in effect that in case the beneficiary member makes his spouse the beneficiary in his certificate and said member and his spouse are divorced or legally separated by order of a court of competent jurisdiction before the death of the member, and said member makes no change in his beneficiary as named in the certificate, the benefits under said certificate shall be paid to the legal heirs of said deceased member. If for any cause the beneficiary named in the certificate is

barred by law from receiving the benefits provided in said certificate, the legal heirs of the deceased member shall become the beneficiaries, and the benefits provided for in said certificate shall be paid to such legal heirs. See Iowa Code of 1897, Secs. 1822, 1825, 1834, 1824; Iowa Code 1924, 1927, 1931, and 1935, Secs. 8778, 8791, 8792, 8785, 8788, and 8789; and, G. A. Iowa, ch. 240, approved April 16, 1919, Iowa Codes [62] of 1924, 1927, 1931, Secs. 8787, 8788 and 8789; Secs. 6311, 6313, R. C. M. 1921 and 1935; *Nitsche v. Security Benefit Association*, 78 Mont. 533, 546-7, 255 Pac. 1062, Sec. 6321, R. C. M. 1921 and 1935; *Weiditschka v. Supreme Tent, Knights of Maccabees*, ..... Ia. ...., 170 N. W. 300, 301-'2 and 175 N. W. 835, 837; and, cases there cited.

It should always be remembered in this connection that the constitution of the Brotherhood of American Yeomen, effective September 1, 1921, provides that "this association shall be empowered to transact business in the United States and the Dominion of Canada", Article II; and that the By-Laws of the Brotherhood of American Yeomen, effective September 1, 1921, provide: 1. That one of the essential objects of the association is "to bestow substantial benefits upon him (the member, interpolated) and his beneficiaries as may be permitted by the laws of the state wherein this association shall operate"; Sec. 3; 2. That the liability of the association "for the payment of benefits upon its certificates, \* \* \* shall not begin until all the acts, qualifications and requirements prescribed for the

applicant in these By-Laws shall have been fully complied with by him, nor until all acts required of the local examiner and the Homestead officers shall have been fully complied with, nor until his application shall have been approved by the Medical Director and a benefit certificate issued thereon and personally delivered to the applicant while in good health. A strict compliance with each and all of the details above referred to shall be a condition precedent to the validity of each and every benefit certificate issued by this association;" Sec. 144; 3. "No officer of this association or any person or persons whomsoever is authorized or permitted to waive any of the provisions of these By-Laws, and such officers and persons are hereby prohibited from waiving any provisions of these By-Laws;" Sec. 146; and, 4. That Section 148 (first) provides "that the statements in the application of said member, including his [63] answers in the medical examination, a copy of which appears upon the back hereof, and which is hereby made a part of this agreement, are true in every particular, and shall be held to be strict warranties, and shall, with the Articles of Incorporation and By-Laws of this association, form the only basis of this contract, for the liability of the association under this section the same as if fully set forth herein, \* \* \*."

It should also be borne in mind in this connection that at the time said benefit certificate No. 177490 was issued to said James Victor Kohler on July 26, 1923, the Brotherhood of American Yeo-



men was operating in the State of Montana through its Homestead No. 546, located at Helena, Montana, and that said benefit certificate was personally delivered to said James Victor Kohler at that place. Sec. 6313, R. C. M. 1921 and 1935; *John Hancock Insurance Co. v. Yates*, 299 U. S. 178, 182, *Weiditschka v. Supreme Tent, Knights of Maccabees*, ..... Ia. ...., 170 N. W. 300, 301-'2 and 175 N. W. 835, 837; *Nitsche v. Security Benefit Association*, 78 Mont. 532, 546-'9; Code of Iowa, 1924, 1927, 1931, 1935, Sec. 11921; *Thomas v. Locomotive Engineer's Mutual Life and Accident Association*, 191 Ia. 1152, 183 N. W. 628, 639-40; Secs. 10581 and 7521, R. C. M. 1921; *Nelson v. Davenport, et al.*, 86 Mont. 1, 6-7, 281 Pac. 537.

14. That the object of that portion of the agreement entered into by and between James Victor Kohler and the defendant Mrs. Daisy S. Kohler, on February 20, 1929, in words and figures as follows: "10. That party of the first part (James Victor Kohler, interpolated,) agrees that he will pay the premium on a certain policy of life insurance in the sum of Two Thousand Dollars (\$2,000) in which the party of the second part (Mrs. Daisy S. Kohler, interpolated,) is beneficiary and she shall remain the beneficiary, said policy of insurance being known as a Yeomen Beneficiary Certificate", was not lawful, said parties were not capable of contracting with reference thereto, the same was contrary to express provision of law as well as to [64] the policy of express law and otherwise contrary to good

morals and in direct violation of the constitution and By-Laws of the Brotherhood of American Yeomen, with the result that the same then was, at all times since then has been and now is void and of no legal force or effect. Secs. 7467, 7468, 7498, 7499, 7553, 6311, and 7502, R. C. M. 1921; Nitsche v. Security Benefit Association, 78 Mont. 532, 546-'7(3), 255 Pac. 1052, Thomas v. Locomotive Engineer's Mutual Life and Accident Association, 191 Ia. 1152, 183 N. W. 628, 639-'40; Weiditschka v. Supreme Tent, Knights of Maccabees, ..... Ia. ...., 170 N. W. 300, 301-'2 and 175 N. W. 835, 837; and cases there cited; Codes of Ia. 1897, 1924, 1927 and 1931; Ia. Code of 1897, Secs. 1822, 1825, 1834 and 1824; Ia. Code of 1924, 1927, 1931 and 1935, Secs. 8777, 8778, 8791, 8792, 8785 and 8787; and 38 G. A. Ia., ch. 240, approved April 16, 1919;

15. If the defendant Mrs. Daisy S. Kohler had acquired any right to, under or by virtue of said benefit certificate No. 177490, under or as a result of the agreement mentioned and set out in conclusion of law No. 14 above, she lost the same as a result and under and by virtue of the understanding and agreement entered into by and between her and said James Victor Kohler on September 9, 1930. See further findings of fact numbered 13, 16, 17, 18, 19, 20 and 21, pages 43 and 45 to 47 above; and that to hold that she now has or at any time since she entered into the understanding and agreement herein referred to has had any right to, under or by virtue of said benefit certificate No. 177490 or the

money paid by the plaintiff herein into the registry of the court, there to abide the judgment of the court, would be to allow her to change her purpose to the injury of another,—the defendant Mrs. Clara Kohler; and to infringe upon the rights of and to perpetrate a fraud upon the latter as well as to take advantage of her own wrong which the law does not permit. Secs. 8738, 8741, 8743, [65] 7479, 7480, 7481, subds. 4 and 5, 8746 and 8752, R. C. M. 1921 and 1935; *Bullard v. Zimmerman, et al.*, 82 Mont. 434, 481, 286 Pac. 512;

16. That when the decree of divorce hereinbefore referred to was rendered and entered therein on February 20, 1929, the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, did not have in mind or intend or attempt to transfer to the defendant Mrs. Daisy S. Kohler any right to, under or by virtue of the benefit certificate involved in this suit, the decree provides only for the permanent dissolution of the bonds of matrimony then existing between Mrs. Daisy S. Kohler and James V. Kohler, the custody of their children; and the payment by him to her of money as alimony for the support of the children and herself. See copy of decree of divorce attached to the separate answer and cross complaint of the defendant Mrs. Clara Kohler filed herein March 30, 1934; Secs. 10519, 10558 and 10561 R. C. M. 1921 and 1935; *State ex rel Durland v. Board of County Commissioners*, ..... Mont. ...., 64 Pac. 2d. 1060, 1061-'2;

17. That had said state court intended or attempted to transfer to the defendant Mrs. Daisy S. Kohler the benefit certificate involved in this suit it was without legal power to do so. The rule in Montana is that under no circumstances could the court transfer the title absolutely. *Thrift v. Thrift*, 54 Mont. 463, 464, 171 Pac. 272;

18. That at no time after September 9, 1930, was the defendant Mrs. Daisy S. Kohler a person dependent upon said James Victor Kohler within the meaning of the law of Iowa or Montana or the constitution and the By-Laws of the Brotherhood of American Yeomen. Iowa Code 1897, Sec. 1824; Iowa Codes of 1924, 1927, 1931 and 1935, Sec. 8785; Sec. 6311, R. C. M. 1921 and 1935; *Bush v. Modern Woodmen of America*, ..... Ia. ...., 152 N. W. 31, 39; *Richey v. Sovereign Camp W. O. W.*, ..... Ia. ...., 168 N. W. 276, 278 and cases there cited; [66]

19. That at all times after the defendant Mrs. Clara Kohler and the said James Victor Kohler were united in marriage on March 11, 1929, she was qualified to be designated as the beneficiary in said benefit certificate No. 177490 and in the duplicate certificate of membership bearing the same number issued by the Brotherhood of American Yeomen to said James Victor Kohler, on March 11, 1932, which provided for the payment of death benefits in the sum of \$2,000 to the defendant Mrs. Clara Kohler, then and at all times thereafter to the time of the death of said James Victor Kohler the wife of said

James Victor Kohler. Iowa Code 1897, Sec. 1824; Iowa Codes 1924, 1927, 1931 and 1935, Sec. 8785; Sec. 6311, R. C. M. 1921 and 1935;

20. That upon said James Victor Kohler, while a member in good standing of Homestead No. 546 of the Brotherhood of American Yeomen located at Helena, Montana, causing said duplicate certificate of membership bearing No. 177490, which provided for the payment of death benefits in the sum of \$2,000 to the defendant Mrs. Clara Kohler, then his wife, to be issued to him by the Brotherhood of American Yeomen she became and at all times remained entitled to the payment of said benefit in the event of the death of said James Victor Kohler. See duplicate certificate No. 177490; secs. 113, 114 and 115 of the constitution and By-Laws of the Brotherhood of American Yeomen, effective January 14, 1932; Sec. 6311, R. C. M. 1921 and 1935; 38 G. A. Ia., ch. 240, approved April 16, 1919; Iowa Codes 1924, 1927, 1931 and 1935, Secs. 8785, 8787 and 8788; and,

21. That upon the death of said James Victor Kohler, on May 9, 1933, the defendant Mrs. Clara Kohler became, ever since then she has been and she now is entitled as the beneficiary named in said duplicate certificate of membership bearing No. 177490, to the \$2,000 paid by the plaintiff herein into the registry of the court, there to abide the judgment of the court, subject, however, to the deductions authorized by law and hereinbefore mentioned and set out. [67]

It follows that it should be and it is hereby ordered:

1. That the plaintiff herein be and it is hereby discharged from further liability to the defendants Mrs. Clara Kohler and Mrs. Daisy S. Kohler, or either of them, based on, growing out of or arising from the issuance by it of its said certificate of insurance No. 177490, on July 26, 1923, providing for death benefits in the sum of \$2,000, wherein the defendant Mrs. Daisy S. Kohler, then the wife of said James Victor Kohler, the insured and now deceased, was named as beneficiary, or its duplicate certificate of membership bearing the same number issued by it on March 11, 1932, to the said James Victor Kohler after his divorce from the defendant Mrs. Daisy S. Kohler, which provided for the payment of death benefits in the sum of \$2,000 to the defendant Mrs. Clara Kohler, then and at all times thereafter to the time of the death of said James Victor Kohler, on May 9, 1933, the wife of said James Victor Kohler;

2. That the defendants Mrs. Clara Kohler and Mrs. Daisy S. Kohler, and each of them, should be and they are hereby enjoined permanently from instituting or prosecuting any suit or proceeding in any state court or in any federal court on said certificate of insurance No. 177490 and said duplicate certificate of membership bearing the same number so issued by the plaintiff herein as aforesaid, or either of them;

3. That the plaintiff herein is not chargeable with interest on the money paid by it into the registry of the court, there to abide the judgment of the court, or otherwise or at all;

4. That the plaintiff herein should be and it is hereby allowed its costs and disbursements herein necessarily expended, including a reasonable attorney's fee hereby fixed by the court at the sum of \$150, to be paid out of the money paid by it into the registry of the court, there to abide the judgment of the court;

5. That in addition to the fees for other services rendered in this suit in equity, the clerk of this court shall charge, collect and deduct therefrom one per centum of the \$2,000 paid by the plaintiff herein into the registry of the court, there to abide the [68] judgment of the court, pursuant to statute, for receiving, keeping and paying out said money pursuant to said statute and by order of this court;

6. That the defendant Mrs. Daisy S. Kohler is and at the time the Bill of Interpleader was filed herein on January 19, 1934, she was entirely without right to claim, receive or recover any part or portion of the \$2,000 paid by the plaintiff herein into the registry of the court, there to abide the judgment of the court, or any relief of any kind, character, nature or description whatsoever in this suit in equity;

7. That the clerk of this court shall pay to the defendant Mrs. Clara Kohler, on demand, the balance of the \$2,000 paid by the plaintiff herein into the registry of the court, there to abide the judg-

ment of the court, remaining in the registry of the court after the deductions authorized and directed to be made by paragraphs "4" and "5" of this order have been made; and,

8. That the defendant Mrs. Clara Kohler do have and recover of and from the defendant Mrs. Daisy S. Kohler her costs and disbursements herein necessarily expended, together with the total amount of all deductions authorized and directed to be made by paragraphs "4" and "5" of this order.

Decree will be entered accordingly.

Done in open court at Helena, Montana, June 15, 1937.

JAMES H. BALDWIN,  
Judge.

[Endorsed]: Filed June 15, 1937. [69]



Thereafter, on June 21, 1937, Decree was duly filed and entered herein in the words and figures following, to-wit: [70]

In the District Court of the United States for the  
Helena Division of Montana.

In Equity—No. 1494.

YEOMEN MUTUAL LIFE INSURANCE COM-  
PANY, formerly Brotherhood of American  
Yeomen, a corporation, Des Moines, Iowa,  
Plaintiff,

vs.

MRS. CLARA KOHLER, 3 North Main Street,  
Helena, Montana, and MRS. DAISY S. KOH-  
LER, 501 O & B Building, Spokane, Wash-  
ington,

Defendants.

DECREE.

This case having duly and regularly come on for trial before the court sitting without a jury in Helena, Montana, on the 22nd day of January, 1936. The plaintiff was represented by Messrs. Wellington D. Rankin and Arthur P. Acher, its attorneys. The defendant Clara Kohler, was present in court in person and represented by Messrs. Paul W. Smith and David R. Smith, her attorneys; and the defendant, Daisy S. Kohler was present in court and represented by Mr. T. H. MacDonald, her attorney, and the court having heard the testimony and having examined the proofs offered by the respective parties, and the court being fully advised in the

premises, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith; Now, Therefore, by reason of the law and findings aforesaid:

It is hereby ordered, adjudged and decreed:

1. That the plaintiff herein be and it is hereby discharged from further liability to the defendants Mrs. Clara Kohler and Mrs. Daisy S. Kohler, or either of them, based on, growing out of or arising from the issuance by it of its said certificate of insurance No. 177490, on July 26, 1923, providing for death benefits in the sum of \$2,000, wherein the defendant Mrs. Daisy S. Kohler, then the wife of said James Victor Kohler, the insured and now deceased, was named as beneficiary, or its duplicate certificate of membership bearing the same number issued by it on March 11, 1932, to the said James Victor Kohler after his divorce from the defendant Mrs. Daisy S. Kohler, which provided for the payment of death benefits in the [71] sum of \$2,000 to the defendant Mrs. Clara Kohler, then and at all times thereafter to the time of the death of said James Victor Kohler, on May 9, 1933, the wife of said James Victor Kohler;

2. That the defendants Mrs. Clara Kohler and Mrs. Daisy S. Kohler, and each of them, should be and they are hereby enjoined permanently from instituting or prosecuting any suit or proceeding in any state court or in any federal court on said certificate of insurance No. 177490 and said duplicate

certificate of membership bearing the same number so issued by the plaintiff herein as aforesaid, or either of them;

3. That the plaintiff herein is not chargeable with interest on the money paid by it into the registry of the court, there to abide the judgment of the court, or otherwise or at all;

4. That the plaintiff herein is hereby allowed the sum of \$150.00 to be paid to it by the Clerk of this Court out of the money paid by said plaintiff into the registry of the court and its costs and disbursements herein necessarily expended, taxed at \$51.73.

5. That the clerk of this court is hereby allowed the sum of \$20.00 to be paid out of the money paid to said clerk by said plaintiff and to be deducted by said clerk from said money.

6. That the defendant Mrs. Daisy S. Kohler is entirely without right to claim, receive or recover any part or portion of the said sum of \$2,000.00 paid by the plaintiff herein into the registry of the court and is without any relief of any kind, character, nature or description in this suit in equity.

7. That the defendant Mrs. Clara Kohler is hereby allowed the sum of \$2000.00 paid by the plaintiff herein into the registry of the court, less the sum of \$150.00 plaintiff's attorneys fee, the sum of \$20.00, the clerk's fee, and the sum of \$51.73 plaintiff's costs herein necessarily expended and taxed by the court; and said remaining sum shall be paid by the clerk of this court to the defendant Mrs. Clara Kohler.

8. That the defendant Mrs. Clara Kohler do have and recover of and from the defendant, Mrs. Daisy S. Kohler, the sum of \$170.00, also costs and disbursements herein necessarily expended by said Mrs. Clara Kohler and taxed at \$16.83. [72]

Dated: June 21, 1937.

JAMES H. BALDWIN,  
Judge.

[Endorsed]: Filed and entered June 21, 1937. [73]

---

Thereafter, on June 26, 1937, Assignment of Errors was duly filed herein in the words and figures following, to-wit: [74]

[Title of District Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Comes now the defendant Daisy S. Kohler by and through her attorney and solicitor and makes and files her assignments of error as follows:

##### I.

The Court erred in allowing any attorneys fee to the plaintiff.

##### II.

The Court erred in entering its decree that plaintiff is not chargeable with interest on the money paid by it into court.

III.

The Court erred in entering in its decree that the defendant Daisy S. Kohler is without right to recover any portion of the sum of two thousand dollars paid by the plaintiff into court.

IV.

The Court erred in entering its decree that the defendant Clara Kohler be allowed the sum of two thousand dollars paid into court by plaintiff.

V.

The Court erred in entering its decree that the Defendant Clara Kohler do have and recover from Defendant Daisy S. Kohler the sum of [75] one hundred and seventy dollars with costs and disbursements taxed at \$.....

VI.

The Court erred in finding that the Defendant Daisy S. Kohler was not a legal dependent on the deceased Victor Kohler at any and all times after their divorce to the time of his death.

VII.

The Court erred in finding that the amount received by Daisy S. Kohler was to be in full settlement for all matters described in the alimony agreement and particularly erred in finding such agreement applied to the certificate of insurance in this case.

## VIII.

The Court erred in finding that before Daisy S. Kohler was paid one thousand dollars in September 1931 it was understood that she would give up the policy of insurance with the understanding that Clara Kohler would advance the one thousand dollars.

Wherefore, Appellant prays that the judgment and decree of the District Court for the Helena Division of Montana may be reversed with directions to said District Court to take such action thereafter as may be proper in the premises in accordance with the decision rendered therein.

T. H. MACDONALD,

Attorney for Appellant.

Copy of the above assignment had and service admitted this 23rd day of June, 1937.

Personal service of within Assignments made and admitted, and receipt of true copy thereof acknowledged this 26th day of June, 1937.

WELLINGTON D. RANKIN,

ARTHUR P. ACHER,

Attorneys for Plaintiff.

PAUL W. SMITH &

DAVID R. SMITH,

Attorneys for Clara Kohler.

[Endorsed]: Filed June 26, 1937. [76]

Thereafter, on June 26, 1937, Petition for Appeal was duly filed herein, in the words and figures following, to-wit: [77]

[Title of District Court and Cause.]

PETITION FOR APPEAL.

Comes now defendant Daisy S. Kohler and conceiving herself aggrieved by the decree of the above entitled court entered herein on the 22nd day of June 1937, does hereby appeal from the said decree and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit and prays that her appeal be allowed and that a transcript of the record and the proceeding and papers upon which said decree was made, and entered, duly authenticated may be sent to the United States Court of Appeals, Ninth Circuit.

T. H. MACDONALD,  
Attorney for Defendant and Appellant  
Daisy S. Kohler.

Personal service of within Petition made and admitted, and receipt of true copy thereof acknowledged this 26th day of June, 1937.

WELLINGTON D. RANKIN,  
ARTHUR P. ACHER,  
PAUL W. SMITH &  
DAVID R. SMITH,  
Attorneys for Plaintiff & Clara Kohler.

[Endorsed]: Filed June 26, 1937. [78]

Thereafter, on June 26, 1937, Allowance of Appeal was duly filed herein, in the words and figures following, to-wit: [79]

[Title of District Court and Cause.]

#### ALLOWANCE OF APPEAL.

And now to-wit, on this 26th day of June, 1937, it is ordered that the appeal herein be allowed as prayed for, and it is further ordered that a bond in the sum of Three hundred dollars with sureties to be approved by the Court be given for the payment of all costs which may hereafter be incurred against the said Defendants and Appellants in the United States Circuit Court of Appeals for the Ninth Circuit and for the payment of all damages which may be sustained by the respondents by reason of said appeal and that such bond shall stay the decree rendered and entered in this Court.

Signed this 26th day of June, 1937.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed June 26, 1937. [80]

---

Thereafter, on June 26, 1937, Bond on Appeal was duly filed herein, in the words and figures following, to-wit: [81]

[Title of District Court and Cause.]

#### BOND ON APPEAL.

Know all men by these presents, that we Daisy S. Kohler and United States Fidelity and Guaranty Company, of Baltimore, Maryland, as sureties are



held and firmly bound to the above named plaintiff and Clara Kohler defendant in the sum of Three hundred dollars (\$300.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made, we bind ourselves and each of us, our successors and assigns, jointly and severally by these presents.

Whereas the above-named plaintiff has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the District Court of the United States, in and for the District of Montana, Great Falls Division in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named plaintiff shall prosecute its said appeal to effect and answer all costs, and all damages awarded against her if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 26th day of June, 1937. [82]

DAISY S. KOHLER

By T. H. MACDONALD,

As her Attorney.

[Seal]

UNITED STATES FIDELITY  
AND GUARANTY COMPANY,

By L. K. ALBRECHT,

Attorney-in-Fact.

Approved June 26, 1937.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed June 26, 1937. [83]

Thereafter, on June 26, 1937, Citation on Appeal was issued herein, which original Citation is hereto annexed and is in the words and figures following, to-wit: [84]

[Title of District Court and Cause.]

#### CITATION ON APPEAL.

To Yeomen Mutual Life Insurance Company, formerly Brotherhood of American Yeomen, a corporation, Des Moines, Iowa, and Mrs. Clara Kohler, 3 North Main Street, Helena, Montana, Greeting:

You are cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal taken, allowed and filed in the office of the Clerk of the United States District Court, for the District of Montana, on the 26th day of June, 1937, in that certain suit, being In Equity No. 1494, wherein Daisy S. Kohler is appellant and Yeomen Mutual Life Insurance Company, formerly Brotherhood of American Yeomen, a corporation, Des Moines, Iowa, and Mrs. Clara Kohler, 3 North Main Street, Helena, Montana, are respondents, to show cause, if any there be, why the judgment and decree made and entered in the above-entitled action, in said appeal mentioned, should not be reversed, and why speedy relief should not be done the parties in this behalf.

Dated this 26th day of June, 1937.

CHARLES N. PRAY,

District Judge. [85]

Due personal service of within Citation made and admitted, and receipt of true copy thereof acknowledged this 26th day of June, 1937.

.....  
Attorney for Plaintiff

WELLINGTON D. RANKIN,

ARTHUR P. ACHER,

Attorneys for Clara Kohler.

Received July 1, 1937.

PAUL W. SMITH,

DAVID R. SMITH,

Attorneys for Defendant Clara Kohler.

[Endorsed]: Filed July 1, 1937. [86]

Thereafter, on July 19, 1937, Testimony to be included in Transcript on Appeal was duly lodged in the Clerk's office, being in the words and figures following, to-wit: [87]

[Title of District Court and Cause.]

TESTIMONY TO BE INCLUDED IN TRANSCRIPT ON APPEAL.

Appearances:

H. W. Pitken, Des Moines, Iowa

J. G. Bowes, Des Moines, Iowa

Wellington D. Rankin, Helena, Montana

Attorneys for Plaintiff.

Paul W. Smith, Helena, Montana

David R. Smith, Helena, Montana

Attorneys for Mrs. Clara Kohler.

T. H. MacDonald, Helena, Montana

Attorney for Mrs. Daisy S. Kohler.

“Mr. Arthur Acher on behalf of the plaintiff offered in evidence plaintiff's Exhibit 1, which was received in evidence without objection. (Said Exhibit 1, a series of letters between the respective parties prior to the institution of this action, will be transmitted to the Circuit Court of Appeals in its original form, and is hereby incorporated herein, and by this reference made a part hereof.)

“MR. S. C. FORD

called as a witness for the plaintiff, being duly sworn, testified as follows:

(Testimony of S. C. Ford.)

Direct Examination

By Mr. Acher:

My name is S. C. Ford. I am a duly licensed and practicing attorney—practicing in Helena, Montana; former Attorney General for the State and former Associate [112] Justice of the Supreme Court, and admitted to practice in all courts in Montana, including the Federal Court.

The Court: Let the record show that he is one of the ablest lawyers in Montana.

S. C. Ford: Thank you.

Mr. Acher: Judge Ford, in this action the plaintiff, insurance company, filed a Bill of Interpleader under the Federal statute, setting forth that there were two claimants to the policy of insurance—the first wife and the second wife; the first wife being divorced. Both being claimants, it was necessary that the attorneys for the plaintiff obtain an order of court from Judge Bourquin, then the Judge of this District, granting permission to file the Bill of Interpleader and ordering that process issue. Thereafter the defendants appeared by motion to strike, and an appearance was made in Court at that time. Thereafter the defendants filed answers and cross-complaints wherein they set up their respective rights as against each other, and in their answers they denied that the suit had been filed with reasonable diligence, or the insurance company entitled to attorneys fees, and alleged that the insurance com-

(Testimony of S. C. Ford.)

pany should pay interest on the sum of \$2000, at that time deposited in court, when the suit was filed. Two replies were filed, one to each answer and cross complaint. Thereafter the case come on for hearing this day, and it was necessary that counsel for the insurance company appear in this action—some proof having been offered as to the proceedings that had been had between the claimants and the insurance company before the Bill of Interpleader was filed; that is this correspondence that had led up to the filing of the suit. In view of this fact, Judge, what in your opinion would be a reasonable attorneys fee to be allowed to the plaintiff insurance company in this case?

A. I believe \$250.00 would be a reasonable attorneys fee.”

---

Thereafter witness E. G. Toomey and C. A. Spaulding attorneys-at-law testified to the same effect and fixed the sum of \$250.00 as a reasonable fee.

---

### MRS. DAISY S. KOHLER

called as a witness in her own behalf.

I am Daisy S. Kohler one of the defendants in this case, fifty-nine years old.

I was dependent on J. Victor Kohler at the time of his death for support. At the time of the death of J. Victor Kohler, I had an income from an inheritance from my mother which amounted to about ten dollars per month.

(Testimony of Mrs. Daisy S. Kohler.)

From the time of my divorce from Mr. Kohler I earned approximately \$250.00 per year doing substitute work.

Between the time of my divorce and Mr. Kohler's death I supported [113] myself and children the first year by working in a hat shop in California for about six months at eighteen dollars per week. Then my son sent for me to come to Spokane because work was getting hard for me at the time. After the divorce I had two complete payments of alimony. That was all then. Then there was for several months that I didn't have any, after I went to California. Then there was one time that I got the alimony. I didn't have my mother's money then, Mother didn't pass away till 1930.

In September 1930 I sold J. Victor Kohler my half interest in the business and he gave me one thousand dollars cash and a note for three thousand dollars, that was to pay for one half of the business he had given me; he owed me at that time \$1700.00 in alimony. I sold that back to him because he had not paid the alimony. He couldn't pay because he didn't have the money at that time.

From that time up to the time of his death I received from him approximately fifty dollars per month, outside of that and then \$10.00 per month from my Mother's estate I had nothing except when I could find work myself.

My daughter is also Victor Kohler's daughter, she is twenty years old. I also at that time had a minor

(Testimony of Mrs. Daisy S. Kohler.)

son. His father was to give me fifty dollars for him and thirty dollars for the younger child who at that time was between eleven and twelve years old—the other child was between seventeen and eighteen—that was to be paid outside of the alimony, but nothing was paid at this time, I mean the fifty and thirty dollars provided in the decree of divorce. I received from Victor Kohler up to the time of his death substantially the amount of fifty dollars per month.

My youngest son did not have work and I could not support him, he did not have an education, so he joined the marines. I gave my consent because he was a minor, that was all that I could do.

The older children had college degrees, the younger children would have gone to college if our home had not been broken up. It was their father's intention.

Clara Kohler, the other defendant, was consulted with reference [89] to the property settlement. At the time she had gone to Aberdeen, Washington. I saw one letter of the correspondence between her and J. Victor Kohler with reference to the property settlement. I knew of one letter he wrote asking her if she would agree to the terms. (Copy of that letter identified and admitted in evidence)



(Testimony of Mrs. Daisy S. Kohler.)

Defendant Daisy S. Kohler's

EXHIBIT No. 2.

"Jan. 17

"My dear Boy:

Your letter came this A. M. just before I left for work. The contence was carefully considered. I am very sorry to even think you would ask me to sign such an obligation. You know, Dear, that things happen when we are least expecting it and attorneys can get by with murder these days. No, I wouldn't for one moment have my children suffer for her selfish desires. I seems if she cant get it all in one way she must sceam another. You have done all possible for your children and giving her part should be enough. I want to not be tied to her in any way or form when married to you. I know the time draggs but after waiting for so long and then be such a fool! No! never.

I would think after what has happened she would be glad to go away and feel as tho she was fortunate to get what she has. She may think she is smart, but she has to go some to beat me. I know her one failing.

The candy arrived yesterday, Darling, and as I have found it will not do me any harm as to my skin, I am certainly enjoying it. I want to thank my thoughtful Darling for sending it to me.

Lovingly yours,

Clara"

(Testimony of Mrs. Daisy S. Kohler.)

Cross Examination

By Mr. Smith:

I did not come to Helena in September 1930 for the purpose of selling the store. I came to see if I could get some of the back alimony due me as I was without money and living with my son. I talked to your father, who was my lawyer at the time, and both he and Mr. Schroeder told me that Mr. Kohler's business was just about on the rocks, and likely to be closed at any moment, and they would advise me, if at all possible, to sell my one-half interest in the store, thereby getting a little money, because he had not been giving this to me. The business was doing nothing—it was gone, and under their direction I saw Mr. Kohler and he was agreeable to the sale, and he asked me what I wanted for my interest and I said “\$5,000”. He said he would give me \$3,000.00. He later agreed to make \$1,000 [90] payment in cash and gave me a \$3,000 note. They advised me to get out of the business so that I would not be liable for one-half of the debts of the business. At this time—We talked about the business, but there wasn't any actual agreement. Before the decree of divorce we just talked together, he couldn't pay me any money and Loble was worrying him somewhat about this, and he asked me to see if I could take Loble off his trail. He wanted me to agree to take this \$1,000 in cash and not insist on this divorce alimony at that time, because he just couldn't pay it. I knew he could not at that time, because he just didn't have the money. He said if

(Testimony of Mrs. Daisy S. Kohler.)

I would accept \$50.00 a month as payment on the note and let him free of the alimony that he would continue to take care of the children and just as soon as he got on his feet and the business built back up, he said "You know I will take care of you as long as you live. Just take Lester Loble off my trail and I will be glad to buy this business and as soon as I can I will do all I can for you." That, of course, was verbal. That is all there was to it.

Q. Along about September 9, 1930 did you not agree that the insurance policy would be returned to Mr. Kohler. Didn't you agree with him about this at the store?

A. I certainly did not.

Q. Well, the insurance policy was discussed, was it not?

A. Never. He never mentioned the insurance policy at any time except the day he handed it to me in Lester Loble's office, and he said that it was for my future protection. He said "I know that I have earning power which you do not have, and I know you can't earn as much as I can." That was for my future protection and he never mentioned the policy at any time after that. We never entered into any agreement whatever, except that I stopped insisting on having the alimony, and that he would buy my part of the business. There was no reference made to the policy at all. Then or at any time. In Mr. Schroeder's letter he said that Mr. Kohler wanted the policy returned to him, which I [91] refused to do, because he had given it to me and it

(Testimony of Mrs. Daisy S. Kohler.)

was in the agreement in court that I was to have that policy and he was to keep up the payments. There was never any mention of the policy between Mr. Kohler and myself after that. The policy was mine, given to me for my protection and it is mine today. It has always been mine.

Mr. Schroeder wrote to me and asked me about returning it, and then some time after that the insurance company asked me to turn it over and I said I would not. As to my actual words, right now I don't remember them. I refer to the Yeomans Mutual Life Insurance Company.

Mr. Schroeder just was helping me with my real estate. When he wrote to me about the house that Mr. Hagler was renting, he also wrote about this policy. He said Mr. Kohler had asked him to get it for him.

### EXHIBIT No. 3

for Clara Kohler admitted.

“March 7th, 1931

Mrs. Daisy S. Kohler,  
611 Garden Ave.,  
Coeur d' Alene, Idaho.

Dear Mrs. Kohler:

I was in Mr. Kohler's store yesterday and he asked about a life insurance policy which I believe he said was with the American Yeoman, and he said he would like to have this policy returned to him. I do not seem to remember very much about this matter in connection with your original deal with him.

Would you mind writing at your convenience and tell me how this matter stands.

Very truly yours,

PGS M

P. G. Schroeder”

EXHIBIT No. 5

for Clara Kohler admitted

“414 Powell Bldg.,

“ Coeur D’Alene, Idaho

“ March 10, 1931.

Dear Mr. Schroeder:

In regard to the insurance policy that Mr. Kohler would like returned to him, I do not feel that it is necessary to make any reply for Mr. Kohler, but, to you, for your own personal knowledge I will be glad to tell you that Judge Smith has the original contract, and it states that the policy had been given to me, and that Mr. K. was to keep up the payments on it.

In view of the fact that I helped equally with him to pay for the policy for 30 yrs. and for my childrens rights, as well as mine, I [92] do not see that it is right for me to give it to Miss Hardie.

She no doubt will outlive us both, and I believe the children should have the benefits, and that just brings a question to my mind. Would my children benefit by the policy if I were to die before Mr. K.

I suppose if I refuse to give him the policy he will stop the payments.

I would be glad to have your advice in this matter, wish I were near enough to talk it over

(Testimony of Mrs. Daisy S. Kohler.)

with you as I am not let me assure you again, Mr. Schroeder that I am eternally grateful for all of your kindness.

Sincerely yours,  
DAISY S. KOHLER”.

and in reply to that letter Exhibit 6 for Clara Kohler is as follows:

“March 24th, 1931

Mrs. Daisy S. Kohler,  
414 Powell Bldg.,  
Coeur d’Alene, Idaho

Dear Mrs. Kohler:

I talked with Judge Smith about the life insurance policy and he brings up several points which may be of interest. For one thing we all know that with an assessment company the insured can very quickly lose all rights under the policy and have it declared void by non-payment of the stated assessment. Then the matter of the terms and conditions as outlined in the policy.

With a fraternal policy it would probably be found references made to the constitution and by laws, so before any one can really learn very much about what can or what cannot be done, it is necessary to read all of these things.

Judge Smith suggests that under some conditions he has known of a fraternal body, whatever its name is, entirely refuse to pay a loss on a policy when the beneficiary of record is no

(Testimony of Mrs. Daisy S. Kohler.)

longer living at the time of the death of the insured. He says further that he doubts whether this company would pay a loss to you now that the insured has another wife. The policy probably emphasizes the fact that the next of kin would be recognized and you being removed from this situation, there is grave doubt in his mind whether you would ever realize anything from the policy.

The suggestion, therefore, is that you read all these documents carefully and see what light may be thrown on the subject.

With best personal regards, I remain  
PGS M                                 Very truly yours,

And

**EXHIBIT 4**

for Clara Kohler is the answer to that letter.

“Coeur d’Alene, Idaho,

April 7th, 1931.

Mr. P. G. Schroeder,  
Helena, Montana

Dear Mr. Schroeder: [93]

Your letter regarding the insurance followed me over to Pullman where I was supplying for two weeks and back here, so that I have only had it a few days.

The Yoeman Lodge here advise me to write to the home office and give them certain information which I do not possess so I am reply-

(Testimony of Mrs. Daisy S. Kohler.)

ing on your generosity again to ask if you will find out for me in what public record our agreement, at time of divorce, is recorded.

The lodge here seem to think inasmuch as Mr. Kohler mentioned giving me the Yoemen policy and saying that he would keep it up for me in his agreement might make it valid.

They suggest that I know just where this agreement is recorded, number of pages, etc., so that I can give this information to the head office when I write.

I believe Judge Smith has this agreement to, if you cared to look at it.

Would it not be a good idea to ask Mr. Berry, living over the Auditorium who is secretary for the Yoeman there, if Mr. Kohler has kept up his payments or perhaps you know this from Mr. Kohler himself.

In my reply to your letter before, perhaps I was a little rude in my reply to be given Mr. Kohler. I really do not want to be anything but kind to him, but I remember at the moment I read your letter I felt that he was trying to take the little I had away from me, and I was bitter for the moment, but now I realize he cannot take any eternal good from me, and that is all that counts, so if you think I should give him an answer, you may say I am thinking it over.



(Testimony of Mrs. Daisy S. Kohler.)

I will be very grateful for this information,  
Mr. Schroeder.

With best wishes,

Sincerely yours,  
DAISY S. KOHLER.

The interest on the note Mr. Kohler gave me was given me each month with the \$50.00, whatever it happened to be. I don't remember the exact amount.

I was to get \$3,500 according to Mr. Kohler out of the Hagler mortgage but all I got was \$1,700.00. It was not quite \$1,700—nearer \$1,600, \$1,675.00 or something like that.

I did not get \$780.00 out of the Mason agreement. There wasn't any lump sum, but I couldn't tell you just how much. I think \$25.00 a month—but I don't remember for how long.

Q. Did you get the Buick car, which was referred to.

A. He promised me an automobile—promised to have one delivered by a certain date; that was in the court agreement, but, of course, that was at a time when he didn't have any money. He asked me not to press him too hard until he got on his feet—that he would do all that he could for me when he [94] got the business going again. Of course, I never got the car, and really never did expect it. I did at the time of the agreement, but I didn't after so much time had gone by.

(Testimony of Mrs. Daisy S. Kohler.)

He paid my fare to Connecticut to visit my daughter, who was having an operation.

He sent me to California to live and sent our goods down there and paid the freight. He said that he was coming there with me the first of June and he sent me down, and I was to put the children in school. I rented a small furnished apartment at first, and then he sent the furniture and promised to be there by the first of June, but when the first of June came he didn't come.

Q. That is all.

#### Redirect

By Mr. MacDonald.

I wrote the Yoemans Insurance Company about this contract.

Q. About the time of your correspondence with Mr. Schoreder.

A. Well, no, it was quite a little bit after that. I don't remember. Maybe one or two months, before I had a letter from the company saying that Mr. Kohler was going to change the beneficiary, and would I please return the policy. I wrote back and said "No, I would not send the policy, because it had been given to me in a court agreement", and then I had another letter from the company.

Mr. MacDonald: Just a moment.

The Court: Let her finish.

A. They advised me to hold the policy as they said the law might be changed. The Yoeman Company themselves told me to hold the policy, saying

(Testimony of Mrs. Daisy S. Kohler.)

they hoped to change the law, and if they did that I would have no trouble in getting my money.

Mr. MacDonald: (reading)

“Mrs. Daisy S. Kohler  
414 Powell Bldg.,  
Coeur d’Alene, Idaho

Dear Madam:

We have referred your letter of April 21st to our General Counsel, Mr. H. W. Pitkin. [95]

He suggested that we advise you that we are now attempting to secure a change in the laws regarding the payment of the benefits of a certificate to a divorced spouse. In his opinion, this change will probably be made in the laws within the next two years and his suggestion is that you allow the beneficiary to stand on this certificate as it now is as under the new law, which we are trying to have passed, a divorced husband or wife may secure the benefits of a certificate.

Fraternally yours,

THE BROTHERHOOD OF AMERICAN  
YOEMEN

By: GEO. F. WALL,

AB:

Secretary”

Cross Examination

By Mr. Acher for plaintiff.

I have lived in Montana for some forty years, Mr. Kohler was a resident of this county and his

(Testimony of Mrs. Daisy S. Kohler.)

estate was probated here. Miss Hardie referred to became Mrs. Clara Kohler. I think I saw the letter which you are referring to.

Letter to Spokane attorneys admitted without objection.

(EXHIBIT 8).

“November 17, 1933

Nuzum & Nuzum  
Attorneys at Law  
Columbia Building  
Spokane, Wash.

Re: DC 14428—James Victor Kohler

Gentlemen:

Last summer we wrote you a letter stating that we were ready and willing to pay the sum due, to-wit: \$2,000.00 if it could be decided who was the proper beneficiary so that the company might be relieved of all responsibility. We stated to you at that time that Attorney Paul W. Smith, Penwell Block, Helena, Montana, represented Mrs. Clara Kohler.

We have been waiting since that date for some reply as to whether the parties interested could come to some agreement in regard to how the proceeds would be paid. We will wait a few days longer and unless we hear from you, we will file a bill of interpleader under the Federal Interpleader statute and let the court determine the proper party to whom the benefits should

(Testimony of Mrs. Daisy S. Kohler.)

be paid. We are also writing the attorney at Helena again.

Very truly yours,

JGB:b

Ass't to General Counsel."

The Court: Any further examination.

Mr. Acher: I think not. We have no further evidence to introduce.

---

MRS. CLARA KOHLER

as witness in her own behalf.

Direct Examination

By Mr. Smith:

I am Clara Kohler, defendant herein, wife of J. Victor Kohler at time of his death May 9th, 1933, and named in application for change of beneficiary and referred to in evidence herein. [96]

I recall seeing Daisy S. Kohler September 9th, 1930 in Helena, Montana, in Kohler's Art Store Mr. Kohler and myself being present. I recall a conversation between Mr. Kohler and Daisy S. Kohler about the Yeoman policy. At that time, they were trying to make some kind of agreement or settlement and Mr. Kohler asked her to give up the policy and she agreed to do so if he would give her one thousand dollars in cash. The one thousand dollars was paid. It was my money. I paid the \$1000 because I felt that we would get the policy back and have some protection, Mr. Kohler was not well

(Testimony of Mrs. Clara Kohler.)

at the time. The business was not good at that time. I paid the premiums on the insurance policy after September 9, 1930, my money was used. The premiums were made up to the time of his death. I made the payments because the business was bad and I had a little money of my own and I used it for the payments. I claim the benefits under the policy. I was not present at any other meetings as they had most of their meetings away from the store.

#### Cross Examination

By Mr. MacDonald:

The money I speak of was not paid until the 17th. There was no agreement for the sale of the store at that time, they could not come to any agreement. Daisy had Mr. Smith draw up different papers as Victor would not sign any of them as they were not what he wanted. It was releasing her from her part of the store.

Witness identifies bill of sale for store which is admitted in evidence

#### EXHIBIT 9.

“Know All Men By These Presents, That I Daisy Kohler, of the City of Helena, County of Lewis and Clark, State of Montana, the party of the first part for and in consideration of one dollar (\$1.00) lawful money to me in hand paid by J. Victor Kohler of the said City of Helena, the party of the second part, the receipt where-

(Testimony of Mrs. Clara Kohler.)

of is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said party of the second part, his executors, administrators and assigns, an undivided one-half interest of, in and to the goods, wares, merchandise, fixtures, accounts and good will of the Kohler Art Store, and an undivided one-half interest of, in and to the goods, wares, merchandise, fixtures, accounts and good will of the Kohler Mortuary, being all my interest in and to said Kohler Art Store located at No. 3 North Main Street in said City of Helena and Kohler Mortuary located at No. 4 Jackson Street, in said City of Helena, and all property pertaining thereto, subject to all existing liabilities against said business and each thereof the said party of the second part by accepting this bill of sale assumes and agrees to pay all of said liabilities and agrees to save the said party of the first part harmless of and free from the payment of the same or any part thereof, the party of the first part never having participated in contracting any of said liabilities and never having assumed any responsibility thereof. [97]

To have and to hold the same, to the said party of the second part, his executors, administrators and assigns forever.

(Testimony of Mrs. Clara Kohler.)

In witness whereof, I have hereunto set my hand and seal the ninth day of September 1930.

[Seal] (Signed) DAISY KOHLER

This is not the agreement on which the one thousand dollars was paid, that is just the bill of sale. It was not for the sale of the store that the one thousand dollars was paid it was for the whole agreement.

I was present at the conversation between Victor and Daisy Kohler with reference to the insurance policy. I was standing at the counter in the store. They were standing about twenty feet from me on the other side. They were talking so I could hear. They were not talking to me they were talking to each other. Of course I was not in the conversation but it was all right for me to hear, they knew I could hear. I was interested being the wife. I don't think I mentioned it to any one. Mr. Schroeder came up to the store with Mr. Kohler to get the thousand dollars. We did mention that this was in full settlement of the agreement that was made beforehand. Mr. Kohler and Mr. Schroeder were there, Mrs. Kohler was not there.

The Court: What I want to know is, was Mr. Schroeder acting as Daisy S. Kohler's agent in getting the money?

Mr. Schroeder was really friendly toward the two of them. He was trying to help them come to some



(Testimony of Mrs. Clara Kohler.)

agreement or settlement. They knew Mr. Kohler could not live up to that first agreement. He just didn't have the money. Well, I cannot say there was such bad feeling between me and Daisy S. Kohler in September 1930.

Examination by Mr. Acher

“That is Mr. Kohler's signature which you show me on Exhibit 'C' attached to the complaint, dated in March, 1932, when the affidavit was sent into the company. Later I received a duplicate policy, and after Mr. Kohler's death I sent in that duplicate policy to a bank in Iowa with proof of loss. Attorney Paul W. Smith received a letter back that they could not take the proofs in that way. Then the papers came back and my attorney sent in the papers without the policy [114] direct to the company. I know that the company was at all times willing and ready to pay the money, but did not know who was entitled to it. They never refused to pay.

The Court: Where is the second policy now?

“A. So far as I know both were sent to the company.

“Mr. Smith: I think it is admitted in the pleadings that I have the second policy here.

“The Court: This second policy should be identified and put in the record. Let the record show that the second policy issued by the plaintiff company to the deceased Kohler was received by Mrs.

(Testimony of Mrs. Clara Kohler.)

Clara Kohler's attorney, and that it was marked Exhibit No. 10 for the defendant Mrs. Clara Kohler. Let the record show that it was admitted without objection. I shall expect somebody to produce the by-laws and constitution, in force at the time the policy was issued. And all amendments and additions, if any; the application for membership, the medical examination, etc., in other words, I shall expect to have produced here those things that are specified in Section 6316 of the Revised Codes of Montana.

Proceed: "Exhibit 10 is by this reference made a part hereof and the original exhibit will be transmitted to the Circuit Court of Appeals.

"Mr. Acher: So far as you know the oral agreement that you have testified to was never called to the attention of the insurance company?

"A. No."

---

### PHILIP SCHROEDER

was called on behalf of Clara Kohler.

My name is Philip Schroeder, Residence, Helena, Montana, am in the real estate business. I know Daisy S. Kohler, Clara Kohler and knew J. Victor Kohler in his lifetime. I recall a conversation with Daisy S. Kohler and J. Victor Kohler in September 1930. The purpose of the meetings was the [115] settlement of the differences between J. Victor

(Testimony of Philip Schroeder.)

Kohler and Daisy S. Kohler—the contracts or agreements which in this case were all mostly alimony settlements—the ones entered into at the time of their divorce.

Mr. Schroeder: Mrs. Kohler, Daisy Kohler, came to my office and explained that she was having great difficulty in securing payments under this alimony agreement and asked for my suggestions as to what might be accomplished to secure her payments under this contract from J. Victor Kohler. This resulted in conferences between Mrs. Daisy S. Kohler and J. Victor Kohler. These conferences were some times held in the office of J. Miller Smith and some times at Brady's office. He was a public accountant. Brady was called in to make an audit of Kohler's business affairs. The object of this was to determine whether or not it was possible to get Mr. Kohler to meet some of these conditions in the alimony agreement. The financial statement made by Mr. Brady indicated that Mr. Kohler's affairs were not in good condition at all and it seemed almost useless to expect him to continue to comply with the terms of this agreement. I suppose a half dozen or more meetings were held and it finally resulted in an offer and acceptance by Mr. Kohler of a settlement of \$4,000—\$1,000 of that to be in cash. A note was given for the balance of \$3,000.00.

The Court: Who were you acting for. Daisy S. Kohler or J. Victor Kohler.

(Testimony of Philip Schroeder.)

A. Something had to be done—I was friendly toward both Daisy S. Kohler and J. Victor Kohler. I could talk to them where they were unable to talk to each other—make suggestions, etc. I was friendly toward both of them, there was no business interest at all.

Mr. Smith: Was the Yeoman's insurance policy mentioned.

A. So far as I recall I never heard the question of the life insurance policy mentioned but once and at that time Daisy Kohler told me that she had in her possession this life insurance policy, explaining that it was a fraternal concern and she asked me if she should not keep it. I suggested that perhaps that policy was of very little value, for two or three reasons—one was that Mr. Kohler could discontinue the premium payments and the other that Kohler's own life expectancy might be 20 or 30 years, and also that the fraternal [99] association might not last as long as he lived. So I suggested to her that she just drop the insurance matter and say nothing more about it. That is the only time I ever heard the matter mentioned at all. They, themselves, might have talked it over at times, but I heard of it only once, just as I said. The \$1,000.00 was handed to me along with the note—the note and check for \$3,000. I had no knowledge of whose money it was. It was a cashier's check issued by the Union Bank, so it did not indicate whose money it was, or from what source it came. I could not say to whose order it

(Testimony of Philip Schroeder.)

was payable, but I take it for granted that it must have been to Daisy S. Kohler, so I would have to answer that it was Daisy S. Kohler. The note was not signed by Clara Kohler. I seldom, if ever, talked with Clara Kohler. She was always in the back ground. All negotiations were with J. Victor Kohler. The \$1,000 was part payment, along with the note.

The Court: What was this part payment for.

Mr. Kohler acknowledged an indebtedness of \$4,000. He said he could not pay the \$4,000 in cash, but he could pay \$1,000 in cash, and he said "I can give you and will give you a note for \$3,000 payable on a monthly payment plan. That was intended to be a settlement of all these matters described by an agreement known as an alimony agreement.

The Court: In other words, it was in settlement of the alimony agreed on.

That was my understanding.

### Cross Examination

By Mr. MacDonald:

The note is dated September 9th and the check which Mr. Kohler gave was delivered on the 17th, so it would be safe to say that the matter was finally settled and closed on the 17th of September. Mr. Kohler signed the note and delivered the check. Delivery was made in the Kohler Store.

The Court: Who was there at the time of delivery. Who was the note delivered to.

(Testimony of Philip Schroeder.)

A. Mr. Kohler and myself. I don't recall that Daisy Kohler was there or not. I think not. The check was delivered to me and taken to J. Miller Smith's office by myself.

Q. I delivered it to J. Miller Smith. I could not say if Daisy Kohler was there at the time. J. Miller Smith was Daisy Kohler's lawyer. [100]

Referring to Exhibit A this is the bill of sale from Daisy S. Kohler to J. Victor Kohler of an undivided one-half interest in the mercantile business. They were delivered at the same time—part of the same transaction.

I acted for neither Victor nor Daisy S. in one sense. I was friendly with the both of them and acted as a go-between.

Q. This agreement was finally made upon this particular sum of money.

A. In Judge Smith's office, and I then went to Mr. Kohler's store and repeated this proposal that he pay \$4,000, having in mind also that the sum of money must be within Mr. Kohler's ability to pay, and it was thought under the circumstances that Mr. Kohler never could meet any obligation greater than this \$4,000.00. Mr. Kohler accepted that proposal when I went up to his store and told him about it.

Q. Do you know exactly what the agreement was.

A. Well, as near as anyone; it apparently was not reduced to writing, at least not to my knowledge. My understanding of the negotiations and

(Testimony of Philip Schroeder.)

conversations was that owing to the fact that the alimony agreement was so burdensome and could not possibly be complied with, this agreement was to supercede that whole agreement, and this was to be a new one.

Q. When, definitely, did Daisy Kohler agree to that arrangement.

A. Well, it was just an accumulation of a half dozen meetings. I couldn't put my finger on any particular minute. The agreement was entered into, however, to the effect that Mrs. Kohler was to sell to J. Victor Kohler her one-half of the Kohler Art Store and Kohler Mortuary. That was embodied in the bill of sale. And that bill of sale is here in evidence. It was part of the negotiations—the bill of sale.

The Court: To clarify the record. Do you not state that the purpose of that bill of sale was to prevent Mrs. Daisy S. Kohler from becoming liable for the debts of the business.

A. That was an inducement, I suppose.

The Court: To be exact, wasn't that bill of sale given for the purpose of preventing any such liability on her part. [101]

Mr. MacDonald: Your Honor, we have no such record in evidence. She stated she wanted to sell the business . . .

The Court: Yes, she stated that was one of the reasons that she wanted to sell the business. She was advised by Mr. Schroeder that she should do so.

(Testimony of Philip Schroeder.)

Mr. MacDonald: I don't remember any such statement.

The Court: It was made, Proceed.

The bill of sale was a part of the general settlement: it was subsequent to the negotiations. Mrs. Kohler deeded this one-half interest in the mercantile business to Mr. Kohler and Mr. Kohler in turn paid by note and check in the sum of \$4,000.00—\$1,000 in cash and note for \$3,000.00. The main object in making this bill of sale and in getting Mr. Kohler to accept it was so that she might be relieved of any further financial responsibility in the event of bankruptcy—if that makes it clear.

The Court: That is clear.

Mr. MacDonald: That is all.

---

### Rebuttal

#### MRS. KOHLER (DAISY S.)

I never did have any agreement with J. Victor Kohler in September 1930 with reference to my turning over to him the insurance policy in question in this case. Mr. Kohler never mentioned the policy to me. I heard the testimony of Clara Kohler with reference to your having a conversation with Victor Kohler in the store in September 1930 at which it was agreed to return to him the policy in question. Such a conversation did not take place. I never mentioned the policy to him nor he to me at any time. I knew nothing about it until Mr.



(Testimony of Mrs. Daisy S. Kohler.)

Schroeder wrote me. The court can see by my letter.

“The Court: Until the Court is put in possession of all the necessary papers in this case, including the application for insurance, by-laws and constitution of the plaintiff company and any amendments thereto, the medical examination of the insured, signed by the applicant, the Court will withhold a decision. The Copy of the by-laws should be signed by the secretary or corresponding officer under the seal of the plaintiff company.

“The Court: Let the record show that the constitution and by-laws and any changes or amendments thereof are to be delivered to the Court by the counsel for the plaintiff with the certificate [116] of the secretary of the society under the seal of the plaintiff here to the effect that they are the by-laws and constitution in force at the time of the issuance of the first policy, at the time of the issuance of the second policy, and at the time of the death of the deceased Kohler. What time do you wish to have to present your findings of fact, and conclusion of law.”

---

MR. PAUL W. SMITH

called as a witness for the plaintiff, being duly sworn testified as follows:

“My name is Paul W. Smith. I acted as attorney for Mrs. Clara Kohler in negotiations between her and the insurance company before this Bill of

(Testimony of Paul W. Smith.)

Interpleader was filed. Upon your showing me Exhibit I which has already been admitted in evidence, I recall writing the letter on November 20th to the Insurance company, which suggests that a suit in interpleader should be filed. I recall receiving a letter from the insurance company, which is set forth as Exhibit 11. (Whereupon Exhibit 11 was offered in evidence without objection and is herein by this reference made a part hereof, the original thereof to be transmitted to the Circuit Court of Appeals.

“Q. This is identical with Exhibit 8, which has been read, addressed to the attorneys in Spokane, Washington, to the effect that the suit would be filed if they could not come to an agreement. Now, Mr. Smith, in Exhibit 1, the letter from The Yeoman Mutual Life Insurance Company on June 29th, discussing this matter, they say:

“We understand that her (Daisy S. Kohler) claim is based upon a property settlement between Daisy Kohler and Victor Kohler, executed February 20, 1929.

“We do not have a copy of this decree nor do we know whether, if the same is as we have been advised, the court can enforce it.

Q. You never sent them a copy.

A. No.

Q. You never sent them any statement of the new agreement, did you.

A. Not that I recall.”

Thereafter, pursuant to the aforesaid order of the court on February 11, 1936, the plaintiff filed in the above entitled action certified copies of certain documents referred to in the certificate of the Judge, which said documents are by this reference made a part hereof, the original exhibits to be transmitted to the circuit court of appeals.

It is stipulated that the foregoing may be settled and certified to as the testimony in narrative form essential to the appeal herein.

WELLINGTON D. RANKIN

ARTHUR P. ACHER

Attorneys for Plaintiff.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant

Clara Kohler.

T. H. MacDONALD

Attorney for Defendant

Daisy S. Kohler. [117]

---

CERTIFICATE.

The undersigned, James H. Baldwin, United States District Judge, in and for the District of Montana, and the Judge before whom said cause was tried, hereby certifies that the foregoing is a true and correct narrative statement of the evidence in the above entitled cause, other than exhibits as follows:

Exhibits Nos. 1, 10, and 11.

11 certified copies of the Constitution and By-Laws of the plaintiff corporation dating from 1901 to 1932, inclusive, issued as follows: 1901, 1906, 1909, 1913, 1917, 1921, 1924, 1925, 1928, 1929, 1932, together with Book on laws of Iowa relating to insurance issued in 1921 and book on the laws of Iowa relating to insurance issued in 1931, together with photostatic copies of papers as follows: photostatic copy of the application for membership and medical examination which was filled out in 1900; photostatic copy of specimen certificate like that which was issued to the insured in May 1900; photostatic copy of the application for exchange of certificate, that is, from the certificate issued in 1900 for the one issued in 1923 and the one that is at issue in this case; certificate issued July 26, 1923; application for change of beneficiary; application for duplicate benefit certificate dated March 5, 1932; photostatic copy of the certificate which was re-issued on March 10, 1932, in which an application for change of beneficiary shows that the insured designated Clara Kohler—attached to said certificate will also be found the application for duplicate benefit certificate; photostatic copy of the proofs of death submitted by Mrs. Clara Kohler; photostatic copy of proofs of death submitted by Daisy S. Kohler;

referred to in said statement and incorporated therein by reference; and it appearing to the Court

necessary and proper that the aforesaid original exhibits should be inspected in the Circuit Court of Appeals upon the appeal herein;

It Is Ordered, that the foregoing exhibits incorporated in the statement of the evidence by reference be transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals at San Francisco, California, and returned after the disposition of said appeal to the Clerk of this Court, and that the foregoing statement be, and the same is, by me, now duly settled, allowed and approved as the statement of the evidence in the above entitled cause.

Dated this.....day of August 1937.

-----  
District Judge.

Received by the Clerk and filed this April 30, 1938.

C. R. GARLOW,  
Clerk. [118]

-----  
Thereafter, on April 30, 1938, a Stipulation in re substitutions and additions to the Proposed Statement of Evidence was received by the Clerk and filed herein, being in the words and figures following, to-wit: [110]

[Title of District Court and Cause.]

STIPULATION.

It is stipulated that the attached pages may be substituted for pages in the original "proposed testimony to be included in transcript on appeal" as follows:

1 and 1a for page 1; 11 and 11a for page 11; 15 and 16 for page 15 (the latter stipulating to the correctness of the entire document) and that the words "I think I saw the letter which you are referring to" (referring to exhibit B) to be inserted after the words "Clara Kohler" on line 11 of page 9 and the words "(Exhibit 8)" after line 12 on page 9 and that the original "proposed testimony" when so amended may be certified by the Court.

WELLINGTON D. RANKIN

ARTHUR P. ACHER

Attorneys for Plaintiff.

PAUL W. SMITH

DAVID R. SMITH

Attorneys for Defendant

Clara Kohler.

T. H. MacDONALD

Attorney for Defendant

Daisy S. Kohler.

[Clerk's Note: The pages referred to in the above stipulation have been incorporated in the testimony.] [111]

Thereafter, on July 19, 1937, Praecipe for Transcript of Record was duly filed herein, being in the words and figures following, to-wit: [103]

[Title of District Court and Cause.]

**PRAECIPE FOR TRANSCRIPT OF RECORD.**

To the Clerk of the United States District Court,  
for the District of Montana:

Please prepare a record for the purpose of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and include the following:

(1) Findings of fact, conclusions of law and order of the court.

(2) Decree of the court.

(3) Assignment of errors.

(4) Appeal.

(5) Allowance of appeal.

(6) Cost bond.

(7) Citation on appeal.

(8) This praecipe.

(9) Testimony.

All captions and indorsements may be omitted, and you are requested to forward typewritten transcripts to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with the rules of this court.

T. H. MacDONALD

Solicitor for Defendant,

Daisy S. Kohler.

Personal service of within Praeceptum made and admitted, and receipt of true copy thereof acknowledged this 17th day of July, 1937.

WELLINGTON D. RANKIN  
ARTHUR P. ACHER

Attorneys for Plaintiff.

PAUL W. SMITH &  
DAVID R. SMITH

Attorneys for Clara Kohler.

[Endorsed]: Filed July 19, 1937. [104]

---

Thereafter, on April 16, 1938, Certified copy of Order of the United States Circuit Court of Appeals, Ninth Circuit, continuing motions and extending time to file Transcript was duly filed herein, being in the words and figures following, to-wit: [105]

At a Stated Term, to wit: The October Term A. D. 1937, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the Twelfth day of April in the year of our Lord one thousand nine hundred and thirty-eight.



Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable William Denman, Circuit Judge,

Honorable Clifton Mathews, Circuit Judge.

No. 8812.

DAISY S. KOHLER,

Appellant,

vs.

CLARA KOHLER,

Appellee.

ORDER CONTINUING MOTIONS, AND  
EXTENDING TIME TO FILE TRANSCRIPT.

Upon consideration of the motion of appellee, filed April 4, 1938, for dismissal of the appeal herein for the non-compliance by the appellant with the provisions of Subdivision 1 of Rule 16 of the Rules of Practice of this Court, and of the motion of appellant, filed April 11, 1938, for denial of said motion, and further relief, and good cause therefor appearing,

It Is Ordered that said motions be, and they hereby are continued; and

It Is Further Ordered that appellant herein be, and hereby is granted to and including May 12, 1938, within which to file with the clerk of this court a certified transcript of record in above cause.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 12th day of April, A. D. 1938.

[Seal]

PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed April 16, 1938.

—————

Thereafter, on April 19, 1938, Second Praecipe for Transcript of Record was duly filed herein, in the words and figures following, to-wit: [107]

[Title of District Court and Cause.]

SECOND PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court for the District of Montana:

Please prepare and forward a record for the purpose of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and include the following:

All papers mentioned in the original "Praecipe for transcript of record" filed herein and in addition thereto the "stipulation" of all parties hereto to be attached to the evidence to be used on the appeal and making the substitutions and additions to the original "proposed evidence" as provided in

said stipulation and a copy of the "order of the Circuit Court of appeals for the ninth Circuit" dated April 12th, 1938, and this praecipe.

Signed T. H. MacDONALD

Attorney for Defendant

Daisy S. Kohler. [108]

Copy had and service admitted this 19th day of April 1938.

W. D. RANKIN

A. P. ACHER

Attorney for Plaintiff.

Copy had and service admitted this 19th day of April 1938.

PAUL W. SMITH

DAVID R. SMITH

Attorney for Defendant

Clara Kohler.

[Endorsed]: Filed April 19, 1938. [109]

---

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD.

United States of America,  
District of Montana—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 118 pages, numbered consecutively from 1 to 118 inclu-

sive, is a full, true and correct transcript of all portions of the record and proceedings in case No. 1494, Yeomen Mutual Life Insurance Company, etc., vs. Mrs. Clara Kohler, et al., which have by praecipe been designated to be incorporated into said transcript, as appears from the original records and files of said court in my custody as such Clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original Citation issued in said cause.

I further certify that the costs of said transcript of record amount to the sum of Twenty and 95/100 Dollars, and have been paid by the appellant.

Witness my hand and the seal of said court at Helena, Montana, this May 7th, A. D. 1938.

[Seal]                      C. R. GARLOW,  
Clerk.

By H. H. WALKER  
Deputy. [119]

---

[Endorsed]: No. 8812. United States Circuit Court of Appeals for the Ninth Circuit. Daisy S. Kohler, Appellant, vs. Yeoman Mutual Life Insurance Company and Clara Kohler, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed May 12, 1938.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

At a Stated Term, to wit: The October Term A. D. 1937, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the sixth day of June in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable William Denman, Circuit Judge,

Honorable Clifton Mathews, Circuit Judge.

No. 8812.

DAISY S. KOHLER,

Appellant,

vs.

CLARA KOHLER,

Appellee.

ORDER DENYING MOTION TO DISMISS  
APPEAL.

The motion of appellee Kohler, filed April 4, 1938, to dismiss the appeal herein for failure of appellant to file the transcript of record and docket the cause in this court having been heard on April 11, 1938, and order entered April 12, 1938 permitting the appellant until May 12, 1938, to file the certified tran-

script of record in the cause and continuing said motion to dismiss, and it appearing that the said transcript of record was filed on May 12, 1938, Now, Therefore,

It is ordered that the said motion of appellee to dismiss the appeal herein be, and hereby is denied.